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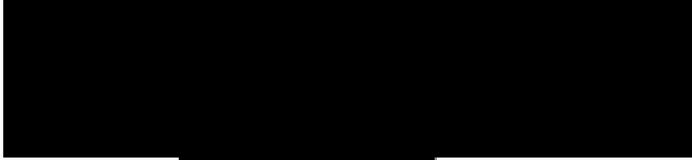
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED]
[EAC 09 224 70083]

Office: VERMONT SERVICE CENTER

Date **MAY 05 2010**

IN RE: Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous physical presence in the United States during the requisite period.

On appeal, the applicant asserts that his TPS was approved on May 3, 2001, and he received employment authorization. The applicant submits additional documents in an attempt to establish his continuous physical presence in the United States.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

- (iii) The applicant is a parolee or has a pending request for reparole; or
- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until September 9, 2010, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The first issue to be addressed is whether the applicant has established continuous physical presence in the United States since March 9, 2001.

On July 15, 2009 the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted additional documentation. The director, in denying the application on October 22, 2009, noted that the applicant had established continuous residence in the United States since

February 13, 2001; however, he had failed to provide any evidence beyond 2003 to establish continuous physical presence.

A review of the documents submitted in response to the notice of July 15, 2009, reflects that the applicant also provided: a) transcripts from the Internal Revenue Service regarding the tax periods ending December 2004 and 2005; b) a social security statement dated August 1, 2006, from the Social Security Administration reflecting his earnings from 2001 through 2005; and c) his daughter's September 24, 2007 birth certificate.

On appeal, the applicant submits additional contemporaneous documents to establish his physical presence in the United States from March 9, 2001 to November 2009. The applicant has, thereby, established that he has met the criteria described in 8 C.F.R. §§ 244.2(b). Accordingly, the director's decision to deny the application on this basis will be withdrawn.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002.

The record reflects that the applicant filed a TPS application (EAC0115552216) during the initial registration period on March 21, 2001.¹ On May 3, 2001, the applicant was granted employment authorization based on a pending TPS application. On August 12, 2002, that application was denied due to abandonment. The applicant filed a motion to reopen, which was received on September 17, 2002.² USCIS electronic records reflect that the motion was rejected on November 7, 2002.³ On May 24, 2005, a second motion to reopen was filed. USCIS electronic records reflect that the case was administratively closed on August 24, 2005.

The applicant filed a second TPS application (EAC0314450711) on April 8, 2003. On January 26, 2004, the director denied the application as the applicant had not established eligibility for late registration. The applicant filed an appeal from the denial of this application on February 7, 2004. The AAO, in dismissing the appeal on August 29, 2005, concurred with the director's findings.

On March 10, 2005, and July 4, 2005, the applicant filed TPS applications (EAC0522471888 and EAC0527870277), which were rejected because the incorrect or no fee was submitted and an outdated version of the Form I-821 was submitted.

The applicant filed a TPS application (EAC0629884904) on July 20, 2006, and indicated that he was re-registering for TPS. On May 14, 2007, the director denied the re-registration application

¹ In the decision dated August 29, 2005, the AAO inadvertently noted that a TPS application was filed on March 31, 2001.

² In the decision dated August 29, 2005, the AAO inadvertently noted that a motion to reopen had not been filed during the requisite timeframe.

³ The appeal form was not signed.

because the applicant's initial TPS application had been denied, and the applicant was not eligible to apply for re-registration for TPS. No appeal was filed from the denial of this application.

On December 26, 2008, the applicant filed a TPS (EAC0910185211), which was rejected because the incorrect or no fee was submitted.

The applicant filed the current TPS application on May 19, 2009. To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On July 15, 2009, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, however, failed to submit any evidence to establish eligibility for late registration. Accordingly, the director denied the application on October 22, 2009.

On appeal, the applicant asserts that he was granted TPS, and as evidence submits the following:

- A notice dated May 2, 2001, which had contained an approved employment authorization card under receipt number EAC0115552169.
- A Form I-797, Notice of Action, dated May 3, 2001, regarding the approval of the applicant's application for employment authorization under receipt number EAC0115552169.
- A copy of his employment authorization card valid until September 9, 2002, under category A19.

The applicant's assertion that he was approved TPS is not supported by the record. The documents submitted on appeal relate to the approval of the applicant's application for employment authorization, and is not evidence that he was approved TPS. Based upon filing of the TPS application, the applicant was afforded temporary treatment benefits and was issued employment authorization upon establishing *prima facie* eligibility⁴ for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS.

The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

⁴ Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if un rebutted will establish a claim of eligibility under section 244 of the Act.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.