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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



M₁

DATE:

Office: VERMONT SERVICE CENTER

FILE:

OCT 12 2011



IN RE:

Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 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 residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts that he entered the United States on January 15, 2001 as a child of a TPS registrant. The applicant submits affidavits from acquaintances in an attempt to establish his continuous residence and 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 Secretary 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 March 9, 2012, 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 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 reveals that the applicant filed his application on January 5, 2010.

Along with his TPS application, the applicant presented a copy of his father's employment authorization card (C12).

In a recent decision, the Board of Immigration Appeals (BIA) held that the TPS regulations require that a late registrant be a "child" only "at the time of the initial registration period," not at the time when the application for late initial registration is filed." The BIA further held that the regulation at 8 C.F.R. § 244.2(g) does not apply to a child who seeks late initial registration for TPS benefits. *See Matter of N-C-M-*, 25 I&N Dec. 535 (BIA 2011).

In the instant case, during the initial registration period, the applicant was a child and his parent was a TPS registrant. In view of the BIA's recent decision, the applicant has established late registration eligibility. Therefore, the finding of the director that the applicant had failed to establish eligibility for late registration will be withdrawn.

The second and third issues to be addressed are whether the applicant has established his continuous residence in the United States since February 13, 2001 and his continuous physical presence in the United States since March 9, 2001.

Along with his TPS application the applicant submitted the following:

- A notarized affidavit from [REDACTED] of Westerville, Ohio, who indicated that he met the applicant in January 2001. The affiant attested to the applicant's moral character.
- A letter dated December 7, 2009, from [REDACTED], manager of House of Japan in Dublin, Ohio, who attested to the applicant's employment since October 15, 2004.
- An uncertified and unsigned Form 1040A, U.S. Individual Income Tax Return, for 2007.
- A notarized affidavit from [REDACTED] of Westerville, Ohio, who indicated that they met the applicant in January 2001. The affiants attested to the applicant's moral character.
- A notarized affidavit from his father, [REDACTED] of Westerville, Ohio, who indicated the applicant arrived at his home in mid-January of 2001.
- His birth certificate with English translation and his El Salvadoran passport.

On March 2, 2010, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided a notarized affidavit from [REDACTED] of Columbus, Ohio, who indicated that he met the applicant in January 2001. The affiant indicated, "I let him take care of my garden and to clean my house occasionally since his arrival."

The employment letter has little probative value as [REDACTED] failed to include the applicant's address at the time of employment as required under 8 C.F.R. § 244.9(a)(2)(i). In addition, no supporting evidence such as pay stubs or wage and tax statements were submitted.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 244.9(b). Casting doubt to the applicant's claim that he resided in the United States since January 2001 is the fact that the affidavits from the affiants do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. Except for the affidavit from [REDACTED] the affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.