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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



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

**PUBLIC COPY**

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUL 01 2005

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

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

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
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 is a native and 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 that he was eligible for late registration. The director also found that the applicant had failed to establish his continuous physical presence in the United States during the requisite periods.

On appeal, counsel argues that the director made a legal and factual error in denying the applicant TPS status and that the record shows that he is prima facie eligible for the benefit.

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 phrase 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 phrase 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. A subsequent extension of the TPS designation has been granted with validity until September 9, 2006, 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 CIS. 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 Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS), on September 17, 2003.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he had filed an

application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On December 17, 2003, 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 was also requested to submit evidence establishing his qualifying residence and physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States, and wrote that he had a pending application for asylum.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on February 20, 2004.

On appeal, counsel reasserts his position.

It is inferred from the record that the applicant is claiming that he qualifies for late registration because an application for asylum was pending or subject to review at the time he filed his TPS application. The record shows that the applicant's father amended his reapplication for asylum to include the applicant as a derivative/dependent under the age of 21 on January 22, 1998. However, contrary to the applicant's belief, the record also shows that the amended application was subsequently withdrawn and the notice of administrative termination was issued on January 7, 2003. Therefore, the applicant had 60 days from the notice date (January 7, 2003) to file his application requesting TPS status in order to qualify for late registration. However, the record shows that the applicant did not file his TPS application until September 17, 2003, which is beyond the initial registration period, and not within 60 days of the termination of his asylum claim.

The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period or within 60 days of the termination as stated above. 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.

The second issue in this proceeding is whether the applicant has established his continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on December 17, 2003 to submit evidence establishing his qualifying residence and physical presence in the United States. The applicant, in response, provided the following documentation:

1. Copies of the applicant's father's application for asylum plus attachments;
2. Copies of the applicant's EAD cards which show that he received employment authorization for the period from February 10, 1999, to February 9, 2002;
3. Copy of the first page from the applicant's IRS Form 1040, U.S. Individual Income Tax Return for 1999, 2000, 2001, and 2002;

4. Copy of the Notice of Adjusted Refund and the Statement of Income Tax Refund sent to the applicant by the New York State Department for the 2000 tax year, dated March 32, 2001; and
5. Copy of the applicant's 1999 IRS Form W-2, Wage and Tax Statement and earnings summary.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous physical presence in the United States since March 9, 2001, and thereafter denied the TPS application on February 20, 2004.

On appeal, counsel argues that the director made a legal and factual error in denying the applicant TPS status and that the record shows that he is prima facie eligible for the benefit and submits the following documentation:

6. A letter of employment from the [REDACTED] dated March 1, 2004, in which the company representative states that the applicant has been employed by the company since March 17, 2000;
7. A copy of the applicant's IRS Form W-2, Wage and Tax Statement for 2001, 2002, and 2003;
8. A copy of the first page from the applicant's IRS Form 1040, U.S. Individual Income Tax Return for 2003;
9. Copies of the applicant's payroll statements from [REDACTED] dated July 5, 2002, July 19, 2002, and October 4, 2002;
10. A copy of the applicant's NYS Driver's License issued June 19, 2002;
11. Copies of bank statements sent to the applicant from North Fork Bank, dated April 8, 2002 and September 6, 2002; and
12. Copies of merchandise receipts issued to the applicant in February and December of 2003.

The applicant has submitted sufficient credible evidence to establish his qualifying physical presence in the United States since March 9, 2001. He has, therefore, established that he has met the criteria described in 8 C.F.R. § 244.2 (b). Consequently, the director's decision to deny the application for TPS on this ground will be withdrawn. Nevertheless, the applicant remains ineligible for TPS due to his late registration as discussed above.

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 with respect to the late registration requirement.

**ORDER:** The appeal is dismissed.