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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]  
[EAC 01 226 60985]

Office: Vermont Service Center

Date: MAY 11 2006

IN RE:

Applicant: [REDACTED]

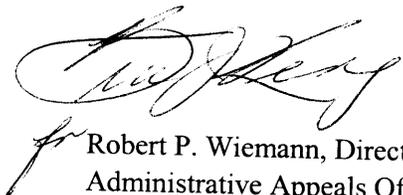
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.

  
for 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 respond for a request for evidence; and therefore, the grounds of denial had not been overcome

On appeal, the applicant asserts his eligibility for TPS and submits additional evidence in support of his claim.

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

- (a) is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 under § 244.3;
- (e) is not ineligible under § 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.

The phrase *brief, casual, and innocent absence*, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 18, 2001.

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).

On October 29, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The applicant was also requested to submit an explanation of his physical presence in the United States from February 13, 2001 to March 7, 2001. In addition, the director noted that the applicant was found to be in violation of Section 212(a)(6)(C)(i) of the Immigration and Naturalization Act, and that the applicant must file an Application for Waiver of Ground of Excludability, Form I-601, with an appropriate fee. The director also noted in her request that the applicant was granted voluntary departure on August 12, 2000, and that the applicant had departed from the United States on September 27, 2000. The director also stated that the applicant had verified his departure from the United States with the Embassy of the United States in San Salvador, El Salvador, on October 5, 2000. The applicant, however, did not respond to the director's request; therefore, the director denied the application on February 3, 2004.

On appeal, the applicant states that his father, Mr. [REDACTED] was granted TPS. The applicant also states that he has established residence in the United States since March 7, 2001. The applicant provides along with his appeal copies of his father's Employment Authorization card; a copy of the summary oral decision dated October 3, 2001, from an immigration judge reflecting that his removal proceedings were administratively closed; and a copy of his birth certificate along with an English translation.

The applicant states that his father, Mr. [REDACTED] was granted TPS. However, TPS status cannot be acquired through another individual. All applicants must meet the continuous residence and continuous physical presence criteria for TPS.

A review of the record of proceedings reflects that the applicant had withdrawn his application for asylum and was granted voluntary departure by an immigration judge on August 2, 2000. The applicant voluntarily departed the United States on September 27, 2000 from Baltimore, Maryland. The record also reflects that the applicant had returned to El Salvador and presented himself at the United States Embassy in San Salvador, El Salvador on October 5, 2000. In addition, the record reflects that the applicant was apprehended by the United States Border Patrol on March 7, 2001, at San Ysidro, while attempting to enter the United States with an altered Guatemalan passport bearing the name of [REDACTED]. Therefore, the applicant could not have met the requirements that he had continuously resided in the United States since February 13, 2001. The applicant has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2 (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

It is also noted that the applicant may be excludable under section 212(a)(6)(C)(i) of the Act and as required in 8 C.F.R. § 244.3(b). However, no Form I-601, Application for Waiver of Grounds of Excludability, has been submitted by the applicant.

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.