

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



M I

FILE:



Office: Nebraska Service Center

Date:

NOV 02 2005

[LIN 03 015 50549]

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Nebraska 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 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 period.

On appeal, the applicant's father, on behalf of the applicant, asserts the applicant's claim of eligibility for TPS and submits evidence in support of the applicant's 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 except as provided 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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present since March 9, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2006, upon the applicant's re-registration during the requisite time period. 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 with the Citizenship and Immigration Services (CIS), on September 11, 2002.

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 April 4, 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 of his entry into the United States since February 13, 2001, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. In addition, the applicant was requested to submit a copy of his current photo identification document. In response, the applicant's father, Mr. [REDACTED], provided copies of his U.S. Individual Income Tax Return for the year 2000, and a letter dated September 29, 1998, from the Internal Revenue Service, regarding the applicant's tax identification number. The applicant, however, did not submit any evidence in support of his eligibility for TPS late registration. The director determined that the applicant had failed to establish he was eligible for late registration. The director also determined that the applicant failed to establish his continuous physical presence in the United States since March 9, 2001. The director, therefore, denied the application on June 2, 2003.

On appeal, the applicant states that his father, Mr. [REDACTED] has been granted TPS. The applicant also provides the following documentation along with his appeal: an affidavit dated June 4, 2003, from his father who stated that the applicant had lived with him since January 27, 2001, and that the applicant had missed school from February 2001 to June 2002; an affidavit dated June 4, 2003, from Ms. [REDACTED] who stated that she was a babysitter for the applicant and his brother since February 7, 2001; and copies of the applicant's personal identification cards.

The first issue in this proceeding is whether the applicant has established his qualifying continuous physical presence in the United States.

A review of the record of proceedings reflects that the applicant was apprehended by the United States Border Patrol on January 22, 2002, at or near Eagle Pass, Texas, while attempting to enter the United States illegally. The record also reveals that the applicant stated that he departed El Salvador on November 25, 2001, traveled through Guatemala, and arrived in Piedras Negras, Mexico on January 19, 2002. It is also noted that the applicant stated at the time of his apprehension that he was en route to the United States in order to live with his father in the United States. Therefore, the applicant could not have met the requirements that he had been continuously physically present in the United States since March 9, 2001. The applicant has, thereby, failed to establish that he has met the criterion described in 8 C.F.R. § 244.2 (b). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence during the requisite time periods. 8 C.F.R. § 244.2 (c). As stated above, the applicant was apprehended by the United States Border Patrol on January 22, 2002, en route to the United States from El Salvador; 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, also failed to establish that he has met the criterion described in 8 C.F.R. § 244.2 (c).

The second issue in this proceeding is whether the applicant is eligible for late registration. A review of the CIS' electronic systems reflects that the applicant's father, Mr. [REDACTED] is an eligible TPS registrant. As such, the applicant has established that he has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, this portion of the director's decision will be withdrawn. However, as described above, the applicant has not met the continuous residence and continuous physical presence eligibility requirements for TPS. Accordingly, the applicant remains ineligible for TPS.

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.