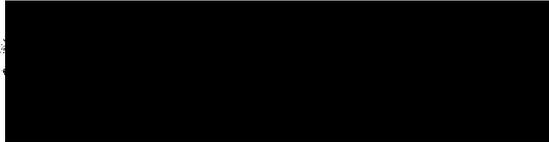




U.S. Citizenship
and Immigration
Services

Identifying cases deleted to
prevent clearly unwarranted
invasion of personal privacy

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FILE: [REDACTED]
[SRC 03 248 54520]

Office: HOUSTON

Date: OCT 03 2005

IN RE: Applicant: [REDACTED]

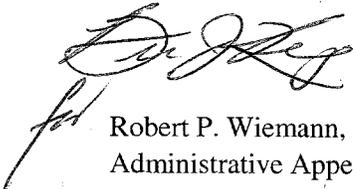
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 District Director, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated to be 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 had continuously resided in the United States since February 13, 2001.

On appeal, counsel explains that the applicant was arrested and detained on June 22, 2004. Counsel asserts the applicant has been initially granted TPS and that he believes that a granting of TPS status prohibits the CIS from deporting the applicant during the period when this TPS status is in effect.

The record reflects that the applicant has never been granted TPS status and that this appeal is from the denial of his first application to register for TPS.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reflects that the applicant filed his initial application with Citizenship and Immigration Services (CIS), on September 8, 2003.

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. An 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 applicant indicates on his Form I-821, Application for Temporary Protected Status, that he did not enter the United States until November 25, 2001. Additionally, the record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated November 26, 2001 indicating that the United States Border Patrol apprehended the applicant after he had illegally entered this country by wading across the Rio Grande River. At that time, he stated that he left El Salvador on April 25, 2001, arriving in Guatemala on April 27, 2001. The applicant further stated that he stayed in Guatemala for approximately five months and that he then entered Mexico where he stayed for approximately one month before he traveled to the United States. Therefore, he cannot establish continuous residence in the United States since February 13, 2001, or continuous physical presence in the United States since March 9, 2001. The provisions of 8 C.F.R. § 244.2(b) and (c) have not been met, and the application is denied for these reasons.

On appeal, counsel states that the applicant has been initially granted TPS and that he believes that a granting of TPS status prohibits the CIS from deporting the applicant during the period when this TPS status is in effect. The record shows that the applicant was granted permission to work in the United States and issued a Form I-766, Employment Authorization Card while his Form I-821 was being processed. This benefit was extended to him and is sometimes extended to others so they may work while their applications are being processed. However, as stated above, the record shows that this applicant has never been granted TPS status and that this appeal is from the denial of his first application to register for TPS.

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a)(1). Therefore, the application is denied for this additional reason.

The record reflects that on January 27, 2003, the applicant was ordered removed from the United States by an immigration judge in Houston, Texas.

An alien applying for temporary protected status 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.