



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **JAN 05 2006**

[EAC 01 251 53869]

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.

*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 (AAO) on appeal. The director's decision will be withdrawn, and the case will be remanded for further consideration and action.

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 as an application for annual re-registration on the basis that the applicant's initial TPS application had been denied.

On appeal, the applicant submits a brief statement and resubmits documentation previously provided.

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.

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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, the latest 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 meets the above requirements. Applicants must submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The record reflects that the applicant submitted a first Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on July 31, 2001 (EAC 01 238 57179 relates). For unspecified reasons, the director terminated that application, without apparent notice to the applicant, on May 23, 2003.

The applicant filed the instant Form I-821 on August 13, 2001, within the initial registration period. On June 4, 2003, the director requested the applicant to submit evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The applicant failed to respond to the director's request.

On July 25, 2003, the director denied the instant application, stating that a previous Form I-821 had been denied on June 4, 2003. The director indicated in his decision that he considered the instant application as an application for annual re-registration.

Based on a review of the record, the director's decision was made in error. The instant application is not an application for annual re-registration; it is an initial application for TPS benefits. Furthermore, the application was not "denied" on June 4, 2003; on that date, the applicant had merely been requested to submit evidence in support of the application. In addition, an explanation of the termination of the applicant's first Form I-821 is not included in the record.

In view of the foregoing, the previous decision of the director will be withdrawn. The application will be remanded to the director for further consideration. The director may request any additional evidence he considers pertinent. Similarly, the applicant may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The decision of the director is withdrawn. The case is remanded for further consideration and action.