

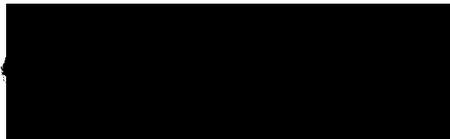


U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 03 076 53738]

Office: VERMONT SERVICE CENTER

Date: **JAN 09 2006**

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, 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 qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts his claim of eligibility for TPS.

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 November 12, 2002.

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 that 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 March 19, 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 continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on April 24, 2003.

On appeal, the applicant asserts that he is a child of a TPS registrant in that his mother has been granted work authorization. The applicant submitted as evidence a copy of his mother's EAD card that was issued based upon her pending asylum application and was valid from September 12, 2001, to September 11, 2002.

Contrary to the applicant's assertion, the record of proceedings demonstrates that the applicant's mother is not a TPS registrant and that the applicant has not been added as a dependent to his mother's asylum application through which she received her work authorization. The applicant has not presented any evidence to establish that he is eligible for late registration.

Further, the applicant submitted evidence in an attempt to establish his qualifying continuous residence and continuous 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. 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 residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on March 19, 2003 to submit evidence establishing his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant, in response, provided the following documentation:

1. A copy of a meal benefit notification from Chelsea Public Schools bearing the applicant's name as student and indicating his status for the 2002-2003 school year;
2. A copy of a Care Plan health member card bearing the applicant's name and date of birth;
3. An affidavit from [REDACTED] which she states that she has known the applicant since February 11, 2001, that he has been present in Massachusetts since then, and that he is originally from El Salvador;
4. An affidavit from [REDACTED] which she stated that she has known the applicant since February 10, 2001, that he has been present in Massachusetts since then, and that he is originally from El Salvador; and,

5. An affidavit from [REDACTED] which she stated that she has known the applicant since February 9, 2001, that the applicant has been present in Massachusetts since then, and that the applicant is originally from El Salvador.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 24, 2003.

On appeal, the applicant reasserts his claim and submits the following documentation:

6. An affidavit from [REDACTED] which he states that he has known the applicant since February 11, 2001, that he has continuously resided in the United States since then, and that he resides at [REDACTED].

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The Chelsea Public School meal notice (No. 1 above) is dated subsequent to the requisite time period, and therefore cannot be used to establish continuous residence and continuous physical presence. The Care Plan health medical card (No. 2 above) is not dated, and therefore cannot be used to determine the applicant's eligibility for TPS.

There has been no corroborative evidence submitted to support the statements made [REDACTED] (Nos. 3, 4 and 5 above) regarding the applicant's claimed presence in the United States beginning in January of 2001. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient evidence has been provided. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v).

The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.