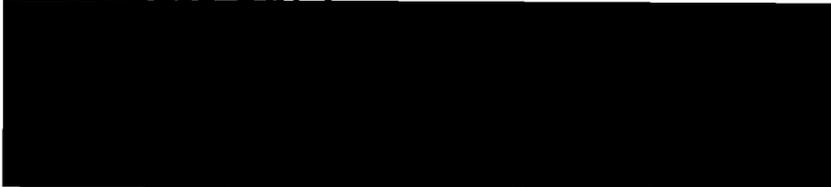


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**U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 27 2006

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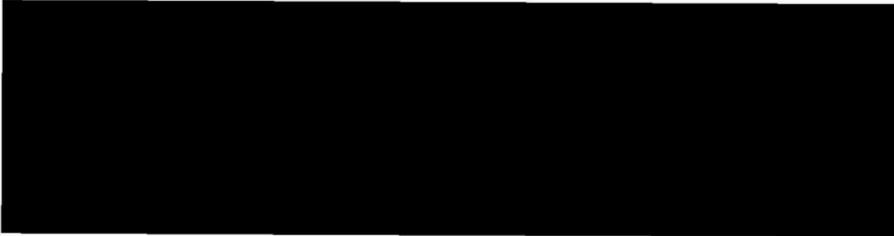
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again 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 initially denied the application on August 4, 2003, because the applicant failed to establish his eligibility for TPS.

On August 29, 2003, counsel for the applicant filed an appeal from the denial decision. On appeal, counsel reaffirmed the applicant's claim to have lived in the United States since 1996 and submitted additional evidence in support of his assertion.

On January 26, 2005, the director reopened the case and provided the applicant with another opportunity to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods

On March 17, 2005, the director denied the application again because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, counsel for the applicant submits a statement and additional evidence.

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 temporary protected status 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.

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. 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, with the latest extension granted until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on November 14, 2002.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall 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 applicant indicated on his Form I-821, Application for Temporary Protected Status, that he entered the United States without inspection on January 20, 1996. On January 26, 2005, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The record does not contain a response from counsel or from the applicant.

The director determined that the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on March 17, 2005.

On appeal, counsel for the applicant repeats the applicant's claim to have lived in the United States since 1996. In support of the prior and current appeals, counsel has submitted the following evidence:

1. a photocopy of the biographic page of the applicant's Salvadoran passport issued in Washington, D.C., on January 29, 1998;
2. a photocopy of the applicant's 2000, 2001, and 2002 Internal Revenue Service (IRS) Forms 1099-MISC, Miscellaneous Income;
3. photocopies of the applicant's 2000, 2001, and 2002 federal and Virginia income tax returns; and,
4. photocopies of two notices informing the applicant that his Forms I-765, Application for Employment Authorization, had been approved based on a pending asylum application, valid for the periods from April 30, 1998 to April 29, 1999 and from April 30, 1999 to April 29, 2000.

The applicant's Salvadoran passport (No. 1 above), his 2000 IRS Form 1099-MISC (No. 2 above), his 2000 federal and Virginia income tax returns (No. 3 above), and the Form I-765 approval notices (No. 4 above) are all dated prior to the requisite periods to establish continuous residence and continuous physical presence in the United States. The applicant's 2001 and 2002 federal and Virginia income tax returns are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods because they do not reflect the applicant's exact dates of residence and employment in the United States during those years.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to

establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that the applicant filed his Form I-821, Application for Temporary Protected Status, on November 14, 2002. The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The applicant's TPS application was filed after the expiration of the initial registration period for Salvadorans. In order to qualify for late initial registration, the applicant is required to establish that he meets the criteria described at 8 C.F.R. § 244.2(f)(2).

The record indicates that the applicant was listed as a dependent on his mother's Form I-589, Application for Asylum and for Withholding of Deportation, filed on September 11, 1995. On March 14, 2001, the asylum application was administratively closed after the applicant turned 21 years of age and was no longer eligible to be included in his mother's asylum application as a dependent. In order to qualify for late initial registration as an alien who had a pending asylum application during the initial registration period, the applicant was required to file his TPS application within 60 days of the termination of his asylum application. Since the applicant didn't file his TPS application until November 14, 2002, he is not eligible for late registration on this basis. The applicant has not provided any evidence to establish that he satisfies any of the other criteria listed at 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

It is further noted that the applicant's most recent Federal Bureau of Investigation (FBI) fingerprint results report reveals the following arrests:

1. On November 30, 1999, the applicant was arrested in Fairfax, Virginia, and charged with carrying a concealed weapon, first offense, and assault and battery. Although the applicant has not provided the final court disposition of these charges, the FBI report indicates that prosecution was declined on these charges.
2. On August 17, 2001, the applicant was arrested in Fairfax, Virginia, and charged with failure to appear on a misdemeanor charge.

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 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.