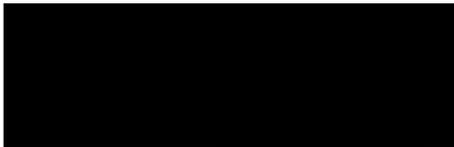




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly **unwarranted**
invasion of **personal privacy**

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **MAY 15 2006**
[EAC 03 110 53177]

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: 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.

Cindy M. Gomez
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 sustained and the application will be approved.

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 submit evidence sufficient to establish that he is a citizen or national of El Salvador.

On appeal, the applicant asserts that he is a citizen of El Salvador, and submits 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 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.

An individual applying for TPS offered to El Salvadorans must demonstrate that he or she is a citizen or national of a state designated under section 244(b) of the Act.

The regulations at 8 C.F.R. § 244.9, state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

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 March 24, 2003, the director requested the applicant submit evidence to establish that he was eligible for late registration. The director also requested that the applicant submit evidence to establish continuous residence, continuous physical presence, nationality, and citizenship. In response to the director's request for evidence, the applicant submitted copies of his INS Employment Authorization (EAD) cards dated March 2, 1999 with validity through May 14, 2003; a copy of his New York Identification Card issued September 26, 2000; copies of income tax return forms dated 1999, 2001, and 2002; copies of employment statements bearing the applicant's name and dated November of 1999, July of 2001, February of 2002, and October and November of 2002; a copy of a Verizon bill dated February of 2002; a copy of a New York Department of Labor unemployment compensation statements dated January and April of 2003; and, a copy of the applicant's asylum application and print-out.

The director determined that the applicant had failed to submit any evidence to establish that he was a citizen or national of El Salvador and denied the application on May 14, 2003.

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

1. A copy of an El Salvadoran birth certificate along with an English translation bearing the applicant's name; and
2. A legible copy of an El Salvadoran Identification Card with a photo identification bearing the applicant's name.

The applicant has provided sufficient evidence to establish that he is a citizen or national of El Salvador. The applicant has provided a copy of an El Salvadoran birth certificate along with an English translation (No. 1 above) bearing the applicant's name, date of birth, place of birth, mother's name, and father's name. The applicant has also submitted a legible copy of his El Salvadoran Identification Card (No. 2 above), which contains photo identification, the applicant's name, date of birth, and place of birth. Therefore, the director's decision will be withdrawn, the appeal sustained, and the application will be approved.

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 met this burden.

ORDER: The appeal is sustained.