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**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED]  
[EAC 05 063 51648]

Office: VERMONT SERVICE CENTER

Date: **NOV 27 2006**

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center (VSC), and is now on appeal before the Administrative Appeals Office (AAO). The decision of the director will be withdrawn and the case will be remanded for further consideration and action.

The applicant claims to be a 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 her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, counsel for the applicant submits a brief.

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.

**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 El Salvadorans was from March 9, 2001, through September 9, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that she 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The applicant, through counsel, filed her initial Form I-821, Application for Temporary Protected Status, on December 30, 2004. In support of the application, counsel submitted evidence that the applicant was eligible for late registration because her parents, [REDACTED] and [REDACTED] are TPS registrants.

CIS computer records indicate that the application was approved, and that an approval notice was mailed to the applicant on April 14, 2005. However, a copy of the approval notice is not contained in the record of proceeding.

According to counsel, the applicant was subsequently notified, on September 2, 2005, that the approval of the application was being reopened *sua sponte* by the director. However, a copy of that letter is not contained in the record of proceeding.

On September 14, 2005, the director denied the application after determining that the applicant had not established her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

Service instructions at O.I. 103.3(c) provide, in part, that the record of proceeding must contain all evidence used in making the decision. As the record of proceeding does not contain a copy of the initial approval of the application, or of the notice of CIS motion to reopen, the decision of the director will be withdrawn and the record will be remanded so that the director can properly prepare the record of proceeding. Furthermore, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), the director must ensure that the applicant is given 30 days in which to submit a brief in response to the director's notice to reopen the proceedings.

It is noted that the applicant is the child of aliens who are currently eligible to be TPS registrants; therefore, she is eligible to file a late application for TPS under 8 C.F.R. § 244.2(f)(2)(iv). However, the late registration provisions under the section do not relax the other requirements for eligibility for TPS. The applicant did not enter the United States until July 26, 2004; therefore, she cannot satisfy the continuous residence and continuous physical presence requirements of 8 C.F.R. §§ 244.2(b) and (c). Furthermore, while certain **grounds of inadmissibility** may be waived, there is no waiver available, even for humanitarian reasons, of the continuous residence and continuous physical presence requirements as stated above.

It is further noted that the applicant has failed to submit sufficient evidence to establish her nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1).

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 consistent with the foregoing discussion.