

identifying data deleted to  
prevent clear, unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

M,

**PUBLIC COPY**

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 30 2007  
[WAC 06 145 70018]

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of El Salvador who is applying for 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 residence and physical presence in the United States during the requisite periods.

On appeal, counsel asserts the applicant's 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 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.

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, 2007, 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 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).

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on April 12, 2006.

On appeal, counsel states that the applicant is eligible for late registration in that his mother is a TPS recipient. The applicant submitted a copy of his El Salvadoran birth certificate, and a copy of his mother's EAD card, category A12, and El Salvadoran passport.

The applicant has submitted sufficient evidence to establish that he has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) as the child of a TPS registrant. Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be withdrawn.

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.

The director denied the TPS application on April 12, 2006, because the applicant had failed to submit any evidence to establish his residence and physical presence in the United States during the requisite time periods. The director noted that the record of proceeding showed that the applicant entered the United States on or about May 7, 2004.

On appeal, counsel states that the applicant is eligible for TPS because of his presence in the United States since August 24, 2004, which he states was before the most recent re-designation period for El Salvadorans.

Contrary to counsel's assertions, while regulations may allow children of aliens who are TPS-eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS as detailed in 8 C.F.R. §§ 244.2(a) through (e).

The record of proceeding shows that the applicant was apprehended by the United States Border Patrol while entering the United States illegally at or near Laredo, Texas, on May 7, 2004, which is subsequent to the initial registration period. Therefore, he cannot satisfy the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).

The applicant cannot demonstrate, as is required by statute, that he was present in the United States during the initial registration, rather than the re-designation periods. Re-designation periods are applicable to those individuals who have been previously granted TPS status, not to initial registrants or applicant's who have been denied TPS. 8 C.F.R. § 244.17. Consequently, the director's conclusion that the applicant had failed to establish his continuous residence and continuous physical presence will be affirmed.

It is noted that the applicant indicated on his Form I-589, Application for Asylum and for Withholding of Removal, Part A.I., sections 11 through 14, that his nationality at birth was El Salvadoran, but that his present nationality was Guatemalan. It is also noted that the applicant indicated on his Form I-213, Record of Deportable/Inadmissible Alien that his country of citizenship was Guatemala; his country of permanent residence was Chiquimula, Guatemala; and that his country of birth was Camotan, Chiquimula, Guatemala. An alien shall not be eligible for TPS if the Attorney General finds that the alien was firmly resettled in another country prior to arriving in the United States. Sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(vi) of the Immigration and Nationality Act (the Act).

As defined in 8 C.F.R. § 208.15, an alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent

resident status, citizenship, or some other type of permanent resettlement. For this additional reason, the TPS application will be denied.

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.