

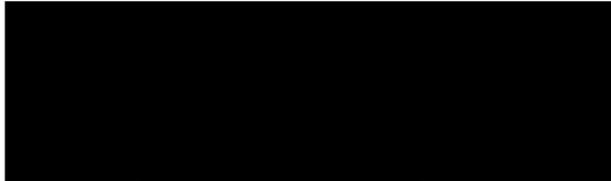
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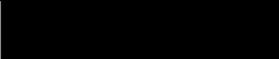
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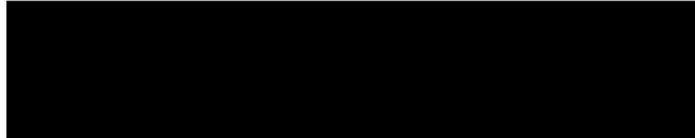
OFFICE: San Francisco, California

DATE:

[WAC 03 221 53296]

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director in San Francisco, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is 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 on the grounds that the applicant failed to establish that he had maintained continuous physical presence and continuous residence in the United States since the requisite dates for TPS applicants from El Salvador, and was thus not eligible for late TPS registration.

On appeal the applicant asserts that he is derivatively eligible for TPS as the child of a TPS-eligible registrant.

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.

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.

El Salvadoran nationals applying for TPS 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 through September 9, 2007, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) above.

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 Citizenship and Immigration Services (CIS). See 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. See 8 C.F.R. § 244.9(b).

The record shows that the applicant was born in El Salvador on October 2, 1992, and entered the United States without inspection near Eagle Pass, Texas, with his mother and two siblings on November 27, 2002. The applicant filed his initial Form I-821, Application for Temporary Protected Status [WAC 03 221 53296], on June 25, 2003 – nearly a year after the close of the initial registration period.

On February 13, 2006, the application was denied by the District Director in San Francisco, California, on the grounds that the applicant failed to establish that he had been continuously physically present in the United States since March 9, 2001, and had continuously resided in the United States since February 13, 2001, in accordance with section 244(c)(1)(A)(i) and (ii) of the Act, and failed to establish his eligibility for late TPS registration. The director also denied two applications for re-registration of TPS which the applicant had filed on August 15, 2003 [WAC 03 236 54567] and April 29, 2005 [WAC 05 210 72072].

On appeal counsel asserts that the district director erred because the applicant is derivatively eligible for TPS under 8 C.F.R. § 244.2(f)(2)(iv) as the child of a TPS-eligible alien. CIS records confirm that the applicant's mother, [REDACTED] was approved for TPS. To be eligible for TPS through a parent after the initial registration period, however, a late filing child must meet the same continuous residence and continuous physical presence requirements as the parent. Thus, if a child of El Salvadoran parents has not been a continuous resident of the United States since February 13, 2001, and continuously physically present in the country since March 9, 2001, he or she is ineligible for TPS regardless of the parent's eligibility. Since the applicant in this case did not enter the United States until November 27, 2002, he does not meet the continuous physical presence and continuous residence requirements for TPS applicants from El Salvador, in accordance with section 244(c)(1)(A)(i) and (ii) of the Act and 8 C.F.R. § 244.2(b) and (c). Accordingly, the district director's denial of the initial application will be affirmed on those grounds.

The AAO also concurs with the district director's denial of the re-registration applications. An applicant must have received a previous grant of TPS to be eligible for re-registration, as only those individuals who are granted TPS must register annually. The applicant must also continue to maintain the conditions of eligibility. *See* 8 C.F.R. § 244.17. Since the applicant in this case has not been granted TPS previously, he is not eligible to re-register for TPS.

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 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 that burden.

ORDER: The appeal is dismissed.