



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 05 202 81250]

Office: VERMONT SERVICE CENTER

Date: DEC 07 2007

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont 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 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 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 after finding that the applicant had not established that he had been continuously physically present in this country since March 9, 2001.

On appeal, the applicant states that he is eligible for late initial registration because his mother has been approved for TPS. The applicant argues that he has previously submitted sufficient documentation to make out a prima facie case of TPS eligibility and requests that his application be approved.

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 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f) (1) Registers for TPS 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. The record shows that the applicant filed his application with Citizenship and Immigration Services on April 20, 2005.

On appeal, the applicant submits a copy of his State of Texas identification card expiring on January 2, 2014, as proof that he has been continuously physically present in the United States since March 9, 2001. Additionally, the applicant states that he is entitled to late initial filing because his mother named [REDACTED] under File Number [REDACTED] has been granted TPS. His mother's file reveals that when she filed her initial Form I-821 on August 14, 2001, she claimed the applicant as her child but stated that he was residing in El Salvador. On subsequent Forms I-821 signed on September 4, 2002 and on July 14, 2003, she also stated that he was living abroad in El Salvador. It was not until she signed her fourth I-821 on February 6, 2005 that she stated that the applicant was residing in the United States. Therefore, because he was living abroad until sometime after July 14, 2003, he could not have maintained continuous physical presence during the required time period. Therefore, the director's determination is affirmed for this reason. 8 C.F.R. § 244.2(c). On appeal, the applicant submits a copy of his State of Texas Identification Card expiring on January 2, 2014. After review of the record including the documentation cited by the director in his determination, it is determined that the applicant has not provided sufficient evidence establishing his continuous residence in the United States since December 30, 1998. 8 C.F.R. § 244.2 (b). Therefore, his appeal is dismissed for this additional reason.

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 cited 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.