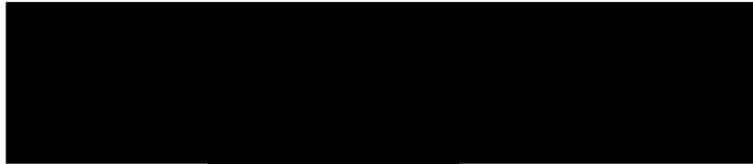




U.S. Citizenship
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invasion of personal privacy**



MI

FILE: [REDACTED]
[EAC 07 002 77889]

OFFICE: Vermont Service Center

DATE: DEC 28 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: 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). 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 his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date he filed for TPS, as required for El Salvador nationals.

On appeal the applicant's father asserts that his son, who was born in El Salvador on November 16, 1994, entered the United States in January 2001 and is eligible for TPS derivatively through his parents.

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 until March 9, 2009, 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 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 applicant filed his Form I-821, Application for Temporary Protected Status, on October 2, 2006. Though this filing was four years after the close of the initial registration period for El Salvadoran nationals, the record shows that both of the applicant's parents, [REDACTED], and [REDACTED] applied for TPS during the initial registration period, were granted TPS, and maintained their status thereafter. Thus, the applicant qualifies for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv) as the child of TPS-eligible parents.

To be eligible for TPS in his own right, however, the applicant must meet the same continuous residence and continuous physical presence requirements as his parents. On December 29, 2006, therefore, the director sent the applicant a notice requesting the submission of documentary evidence that he has been a continuous resident of the United States since February 13, 2001, and was continuously physically present in the country from March 9, 2001, to the date of filing for TPS. The applicant did not respond to the notice. Accordingly, the director denied the application for TPS on February 14, 2007, on the grounds that the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal the applicant's father claims that his son entered the United States in January 2001 and submits assorted school and health records pertaining to his son during the years 2003 to 2007. There is no documentation in the record of the applicant's presence in the United States before 2003. A review of the mother's record [REDACTED] shows that [REDACTED] stated on each of the first three TPS applications she filed – in April 2001, September 2002, and August 2003 – that her son, the applicant, was residing at those times in El Salvador. This information accords with the documentation in the applicant's file, which does not record any presence in the United States before October 22, 2003, the date of the initial U.S. entries in the applicant's immunization card and the date his emergency information card was issued by his school. It is also noted that the applicant's report card for the school year 2003-2004 contains no entries for the first trimester.

Based on the foregoing evidence, the AAO concludes that the applicant has failed to establish his continuous physical presence in the United States from March 9, 2001, to the date he filed for TPS, and his continuous residence in the United States since February 13, 2001, as required for TPS applicants from El Salvador under section 244(c)(1)(A)(i) and (ii) of the Act and 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's denial of the application on these grounds will be affirmed.

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.