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U.S. Department of Homeland Security
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Washington, DC 20529



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

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FEB 28 2007

FILE:



OFFICE: California Service Center

DATE:

[WAC 05 119 70126]

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:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

It appears that the applicant has been assisted in this proceeding, though there is no Form G-28, Notice of Appearance as Attorney or Representative, in the record.

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 ground that the TPS application was not timely filed and the applicant failed to establish that he was eligible for late registration.

On appeal the applicant asserts that he is eligible for late registration through his father, who has been granted 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.
- (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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his Application for Temporary Protected Status (Form I-821) with Citizenship and Immigration Services (CIS) on January 27, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he satisfied at least one of the criteria enumerated 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 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).

On May 4, 2006, the director issued a Notice of Intent to Deny requesting the applicant to submit evidence establishing his eligibility for late registration in accordance with 8 C.F.R. § 244.2(f)(2), as well as evidence of the applicant's date of entry into the United States, his nationality/identity, and his continuous residence in the United States since February 13, 2001 and continuous physical presence since March 9, 2001. In response the applicant, who claims to have entered the United States without inspection in December 2000, submitted various documentation including copies of Employment Authorization Cards issued to his father and him; a copy of his

El Salvadoran passport and birth certificate; federal income tax returns; earnings statements; and a letter from the Selective Service System.

In a Notice of Decision issued on June 27, 2006, the director noted that the TPS registration filed by the applicant's father, [REDACTED], was denied on September 6, 2005. Since the applicant was not a child of an alien currently eligible for TPS, the director determined that he did not qualify for late registration.

On appeal the applicant reiterates his claim that he is eligible for late registration through his father, who has TPS. The applicant resubmits copies of previously submitted documents, including his father's Employment Authorization Card which he cites as proof of his father's TPS. The Employment Authorization Card, however, is not evidence of TPS. It shows that the applicant's father was granted employment authorization based on the filing of a Form I-765, not Temporary Protected Status, which is based on the filing of a Form I-821.

CIS records show that the applicant's father was denied TPS on September 6, 2005. Thus, the record does not establish that the applicant qualifies for late registration under the criterion at 8 C.F.R. § 244.2(f)(2)(iv), which requires that he be the child of an alien eligible for TPS. Nor does the applicant qualify for late registration under any of the other criteria enumerated at 8 C.F.R. § 244.2(f)(2)(i), (ii), and (iii). Accordingly, the AAO concurs with the director's decision to deny the application for TPS.

Beyond the decision of the director, the AAO notes that none of the other documentation submitted by the applicant establishes that he has been continuously resident in the United States since February 13, 2001, or that he was continuously physically present in the country from March 9, 2001 until the filing of his TPS application in January 2005. The only document in the record from the year 2001 which could conceivably pertain to the applicant is a bank statement of "[REDACTED]" dated February 13, 2001, which lists daily balances from November 9 to December 13. The document is not credible, however, for a number of reasons. First, the account-holder is identified as [REDACTED] whose middle initial does not correspond to the applicant's name. Second, the statement date – February 13, 2001 – is two months after the close of the transaction period – November 9 to December 13 – for which daily balances are listed. Lastly, the applicant claims to have first entered the United States in December 2000, while the bank statement records transactions which purportedly took place in November of that year.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). No such competent evidence has been submitted by the applicant to reconcile the inconsistencies in the cited bank statement and demonstrate that he was present in the United States as early as February 2001. Moreover, doubt cast on any aspect of the applicant's evidence reflects on the reliability of the petitioner's remaining evidence. *See id.* The AAO concludes that the documentation of record fails to establish that the applicant meets the continuous physical presence and residence requirements of 8 C.F.R. § 244.2(b) and (c).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The director's decision to deny the application for TPS will be affirmed.



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.

ORDER: The appeal is dismissed.