

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

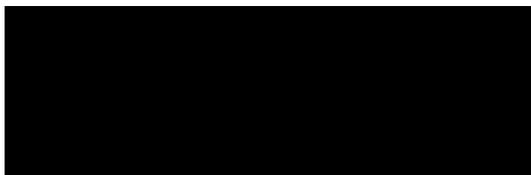
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1

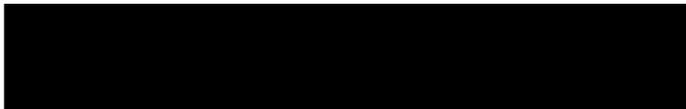


FILE: [REDACTED]
[WAC 05 152 70313]

OFFICE: California Service Center

DATE: MAY 08 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, California Service Center. It is now before the Administrative Appeals Office (AAO) on appeal. 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 she had resided continuously in the United States since February 13, 2001 and been continuously physically present in the United States since March 9, 2001.

On appeal the applicant's father asserts that the applicant has been in the United States since October 2000 and submits some additional documentation.

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.
- (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 her initial Form I-821, Application for Temporary Protected Status, on June 13, 2005 – more than two and one-half years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the qualifying 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).

Though her TPS application was filed long after the initial registration period, the evidence of record shows that the applicant – who was born in El Salvador on September 8, 1996 – was eligible for late TPS registration as the daughter of [REDACTED], who applied for TPS during the initial application period, was approved, and has continued to extend his TPS in succeeding years. Thus, the applicant qualifies for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv) as the child of a currently eligible TPS registrant.

The record includes a photocopy of the applicant's El Salvadoran passport, on the basis of which the AAO determines that the applicant has established her identity and El Salvadoran nationality, in accordance with 8 C.F.R. § 244.2(a).

On May 31, 2006, the service center requested the applicant to submit documentary evidence within 33 days that she had been a continuous resident of the United States since February 13, 2001, and continuously physically present in the United States since March 9, 2001. The applicant did not respond to the request for evidence. On August 10, 2006, therefore, the director denied the application on the grounds that the applicant had failed to establish her continuous residence and continuous physical presence in the United States from the applicable dates for TPS registrants from El Salvador.

On appeal the applicant's father asserts that his daughter has been in the United States since October 2000. Additional documentation is submitted, including vaccination and school records, as evidence of the applicant's presence in the United States.

The documentation of record still does not establish that the applicant meets the TPS requirements applicable to El Salvadoran nationals of continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The evidence originally submitted with the petition included the applicant's vaccine immunization record from ██████████ in Manassas, Virginia, which lists a series of vaccines given between September 2003 and January 2004, and another series of vaccines given between 1996 and 2001 that were "copied from old records;" the applicant's report card from West Gate Elementary School for the 2003-04 academic year; and an identification card issued to the applicant by West Gate School in December 2004. The additional documentation submitted on appeal includes two additional pages of her elementary school record, which applies to the school years 2003-04, 2004-05, and 2005-06; as well a school form of uncertain origin, containing information about the applicant and her parents, with a handwritten date on the bottom of "9.29.00." This last document is the only one in the record that dates prior to 2003. The date on the document appears suspect, however, since September 29, 2000, is prior to the date cited in the TPS application – October 12, 2000 – as the applicant's date of entry into the United States. Moreover, in his initial TPS application filed in August 2002, the applicant's father entered the notation "N/A" (not applicable) in the section asking for information about his wife and children. Not until he filed his first re-registration application in early September 2003 did the applicant identify his daughter, the applicant, as residing with him in the United States.

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 to resolve the foregoing inconsistencies concerning the applicant's date of entry into the United States.

The AAO determines that the record fails to establish that the applicant was continuously physically present in the United States from March 9, 2001, and continuously resident in the United States from February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's denial of the application will be affirmed on those grounds.

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.