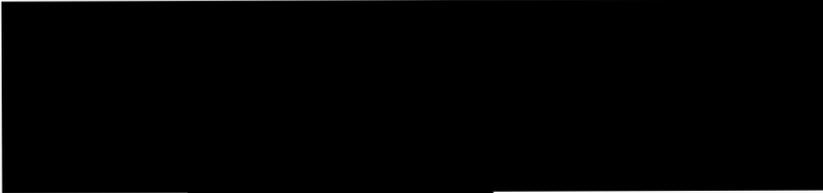




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



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FILE:



OFFICE: Vermont Service Center

DATE:

MAY 14 2007

[EAC 05 229 75163]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant claims to be 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 he was eligible for late TPS registration, that he had continuously resided in the United States since February 13, 2001, and that he had been continuously physically present in the United States from March 9, 2001 until the date his application was filed.

On appeal, the applicant asserts that he is eligible for TPS through his father, who was granted TPS. The applicant resubmits copies of some documentation already in the record.

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 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 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 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 initial Form I-821, Application for Temporary Protected Status, on May 17, 2005 – more than two and one-half years after the close of the initial registration period for TPS applicants from El Salvador. On January 31, 2006, the director requested the applicant to submit evidence that he was eligible for late TPS registration, that he had continuously resided in the United States since February 13, 2001, and been continuously physically present in the United States since March 9, 2001, and that he was an El Salvadoran national. In response the applicant's father, [REDACTED] [Alien # [REDACTED]] submitted a photocopy of the applicant's birth certificate, confirming that he was born in El Salvador on August 14, 2001, letters from two acquaintances in the United States who indicated that they had known the applicant and his mother since their arrival in the United States in October 2003, and a letter of his own asserting that his son (the applicant) and his wife were eligible for TPS because he has been granted TPS.

On June 5, 2006, the director denied the application on the grounds that the applicant failed to establish his eligibility for late TPS registration and, since the record indicated that the applicant arrived in the United States on or about October 15, 2003, failed to establish that he had been a continuous resident of and physically present in the United States since the applicable dates in February and March 2001 for El Salvadoran nationals.

On appeal, the applicant's father reiterates his claim that the applicant is derivatively eligible for TPS through him. Copies of previously submitted materials are submitted with the appeal, but no new documentation.

Citizenship and Immigration Services (CIS) records confirm that the applicant's father, [REDACTED], filed for TPS during the initial registration period, was approved, and has subsequently extended his TPS with annual re-registrations. Thus, the applicant is eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv) as the child of a currently eligible TPS registrant. The applicant has overcome that ground of denial. However, while the children of TPS-eligible parents are also eligible for TPS, they must meet the same continuous residence and continuous physical presence requirements as their parents. Thus, if a minor child of El Salvadoran parents was not 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 parents' eligibility. The applicant does not meet those requirements for TPS.

The applicant's Form I-821, filed on May 17, 2005, cites October 15, 2003 as his date of entry into the United States. This time frame is confirmed in the two letters from acquaintances, previously discussed, who stated that the applicant and his mother arrived in the United States in October 2003. Moreover, the applicant was not born until August 14, 2001. Thus, the record clearly shows that the applicant has not been continuously physically present in the United States since March 9, 2001, and has not resided continuously in the United States since 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 decision to deny the application for TPS will be affirmed on those grounds.

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 this burden.

ORDER: The appeal is dismissed.