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



U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**

[REDACTED]

FILE: [REDACTED]  
[EAC 07 011 78443]

Office: VERMONT SERVICE CENTER

Date: NOV 05 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:

[REDACTED]

**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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and 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 because the applicant failed to establish that he continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts the applicant's claim of eligibility for 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 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.

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. An extension of the program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. 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). 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. 8 C.F.R. § 244.9(b).

The record reveals that the applicant filed a TPS application subsequent to the initial registration period under CIS receipt number EAC 02 185 50652. The director denied that application on April 8, 2005, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant did not file an appeal.

The applicant filed the current TPS application on October 11, 2006.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 26, 2007.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS and submits copies of the applicant's employment authorization cards, social security statement, and a juror service notice. The applicant also submitted a letter from [REDACTED] in which he stated that the applicant resided with him from January of 2001 to October of 2003.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant's employment authorization cards only show that the applicant received them, but does not demonstrate his residence or presence throughout the requisite time periods. The applicant submitted an affidavit in an effort to establish his residence and physical presence in the United States. Although the affiant states in the affidavit that he has known the applicant to be present in the United States since January of 2001, there has been no corroborative evidence to substantiate this assertion. The applicant claims to have been present in the United States since 1990. It is reasonable to expect that he would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. The social security statement does not record any earning for the 2000 tax year, and a limited amount of income for all the other years listed. The juror notice is dated subsequent to February 13, 2001 and March 9, 2001.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision with respect to this issue will be affirmed.

Beyond the decision of the director, the applicant has failed to submit evidence to establish his identity and nationality.

Persons applying for TPS offered to El Salvadorans must demonstrate that he or she is a citizen or national of a state designated under section 244(b) of the Act.

The regulations at 8 C.F.R. § 244.9 state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing

nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; [REDACTED])

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS and submits a copy of an El Salvadoran birth certificate with English translations.

There has been insufficient evidence submitted to establish the applicant's eligibility for TPS. Although the applicant submitted a photocopy of his birth certificate, it is not supported by any photo identification documents, as required. The applicant has failed to submit evidence to establish his identity and nationality. Consequently, the director's decision with respect to this issue will also 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.