



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: NOV 08 2007

- consolidated herein]

[EAC 06 341 73963]

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant is 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 was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, counsel for the applicant submits a brief and 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 Temporary Protected Status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under § 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 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 Form I-821, Application for Temporary Protected Status, on September 6, 2006, almost four years after the initial registration period had ended.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The application was denied by the VSC Director on February 16, 2007, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the periods required by the regulations, as well as his eligibility for late registration. Counsel filed the current appeal from that denial decision on March 20, 2007.

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record reveals that the applicant filed a Form I-589, Application for Asylum and Withholding of Removal, on December 2, 1996. His asylum application was administratively closed and referred to an Immigration Judge (IJ) on January 20, 1998, because the applicant failed to appear for his scheduled asylum interview. A Form I-862, Notice to Appear (NTA), was mailed to the applicant. However, he failed to claim the registered mail, after two notices were left by the U.S. Postal Service at his residence. The IJ administratively closed the applicant's removal proceedings on April 7, 1998, after the applicant failed to attend his hearing, and no proof of service of the hearing was provided by District Counsel.

On May 4, 2006, after an NTA was personally served on the applicant, the removal proceedings were reopened. The IJ again administratively closed the proceedings on October 12, 2006, upon the joint request of both parties, on the basis that the applicant was prima facie eligible to apply for TPS.

Since the applicant's asylum application was never denied, but only administratively closed, he is eligible for late registration since he had an application for asylum that was pending during the initial registration period, and remained pending until it was administratively closed by the IJ on October 12, 2006. Therefore, the director's decision to deny the application for failure to establish his eligibility for late registration will be withdrawn.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, to the date of filing his TPS application.

On appeal, counsel submits the following documentation:

1. An affidavit from the applicant.
2. An affidavit from the applicant's sister, [REDACTED]
3. A copy of an Express Mail envelope dated November 21, 2001, from the applicant's father.
4. Copies of the applicant's English as a Second Language homework from October 29, 2001 through October 4, 2004.
5. English as a Second Language registration from 2005 to 2006.

The statements from the applicant and his sister regarding the applicant's claimed presence in the United States since 1996 are not supported by any corroborative evidence. The remaining documentation is dated after the required dates. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. The applicant has, therefore, failed to establish that he has met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the director's decision to deny 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 Temporary Protected Status 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.