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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE: NOV 21 2007

consolidated herein]
[EAC 06 224 78292]

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 (VSC). It is now on appeal before the Administrative Appeals Office (AAO). 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 he had 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 to the date he filed for TPS.

On appeal the applicant asserts that he is derivatively eligible for TPS as the child of a TPS-eligible registrant.

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 through March 9, 2009, 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 met at least one of the 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).

The record shows that the applicant was born in El Salvador on November 1, 1986, and entered the United States without inspection near Eagle Pass, Texas, on November 14, 2005. The applicant filed his Form I-821, Application for Temporary Protected Status, at the VSC on May 11, 2006 – more than three and a half years after the close of the initial registration period for El Salvadoran nationals.

On April 23, 2007, the application was denied by the VSC Director on the grounds that the applicant failed to establish that he had been continuously physically present in the United States since February 13, 2001, and continuously physically present in the United States from March 9, 2001, to the date of filing for TPS.

On appeal counsel asserts that the district director erred because the applicant is derivatively eligible for TPS as the child of a TPS-eligible alien – his father, [REDACTED] – who applied for TPS on April 16, 2002, identifying the applicant on the Form I-821 as his son, and who was granted TPS later that year.

CIS records confirm that [REDACTED] was approved for TPS in 2002, which would make the applicant eligible for late initial registration under 8 C.F.R. § 244.2(f)(2)(iv).

To be eligible for TPS through a parent after the initial registration period, however, a late filing child must meet the same continuous residence and continuous physical presence requirements as the parent. Thus, if a child of El Salvadoran parents has not been 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 parent's eligibility. Since the applicant in this case did not enter the United States until November 14, 2005, he does not meet the continuous physical presence and continuous residence requirements for TPS applicants from El Salvador, in accordance with section 244(c)(1)(A)(i) and (ii) of the Act and 8 C.F.R. § 244.2(b) and (c). Therefore, the denial of the initial application by the VSC Director 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 that burden.

It is noted that the applicant is subject to a Warrant of Removal/Deportation issued on April 12, 2006, by the Field Office Director, Detention & Removal, in San Antonio, Texas, based upon the final order of an Immigration Judge in San Antonio dated April 5, 2006.

ORDER: The appeal is dismissed.