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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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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: NOV 26 2007

[WAC 05 203 75379]

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

*John D. Vaughan*  
*for*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center (CSC). A subsequent appeal was dismissed by the Director, now Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The applicant is a citizen and national 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 applicant appears to be represented by [REDACTED] however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant, in care of his mother, [REDACTED]

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.

El Salvadoran nationals applying for TPS must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity 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 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 shows that the applicant was born in El Salvador on February 25, 1994, and filed his initial Form I-821, Application for Temporary Protected Status, at the Texas Service Center (TSC) on October 26, 2001, under Citizenship and Immigration Service (CIS) receipt number SRC 02 036 58044. The TSC Director denied that application on June 23, 2003, on the ground of abandonment because the applicant did not respond to a request for evidence issued on January 28, 2003.

The applicant filed a second Form I-821 at the CSC on April 21, 2005, identifying it as a re-registration application. The CSC Director denied the application on January 30, 2006, because the applicant's initial TPS application had been denied, making him ineligible to re-register for TPS.

An appeal was filed on February 21, 2006, which was dismissed on by the Chief, AAO, on December 29, 2006. The AAO Chief affirmed the director's decision that the applicant was not eligible to re-register for TPS and, while determining that the applicant was eligible for late initial registration through his mother, a TPS registrant, ruled that the applicant remained ineligible for TPS because he had not established his continuous residence and continuous physical presence in the United States during the requisite time periods.

A motion to reopen was filed on January 19, 2007, accompanied by photocopies of the following documentation: the applicant's intermediate progress report for the first half of the 2006-07 academic year from Lost River Elementary School; letters dated November 10, 2006, and December 5, 2006, from [REDACTED] and three rejection notices from CIS dated October 30, 2006, and November 24, 2006, pertaining to the attempted filing of another TPS application and an application for employment authorization; and copies of two DHL mailing receipts.

Earlier in the proceedings the following documentation was submitted as evidence of the applicant's residence and physical presence in the United States: a series of Employment Authorization Documents (EADs) and Social Security cards issued to the applicant and other family members; the applicant's school record indicating an entry date of August 2001; his school attendance report dated February 10, 2006; a letter from [REDACTED] Secretary for Lost River Elementary School, dated February 10, 2006, stating that the applicant had been enrolled since August 2001; the applicant's personal immunization record card, showing several entries in August and September 2001; and a progress report from Lost River Elementary School, dated October 19, 2001.

None of the foregoing documentation shows the applicant to have been in the United States prior to August 2001. Furthermore, the applicant's mother indicated on her initial TPS application, filed on March 29, 2001, that the applicant was residing in El Salvador at that time. Thus, the evidence of record fails to establish the applicant's continuous physical presence in the United States since March 9, 2001, and continuous residence in the United States since February 13, 2001, as required for El Salvadoran nationals under 8 C.F.R. § 244.2(b) and (c). Therefore, the grounds for denial in the AAO's previous decision have not been overcome on motion.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

**ORDER:** The motion to reopen is dismissed. The previous decision of the AAO, dated December 29, 2006, is affirmed.