

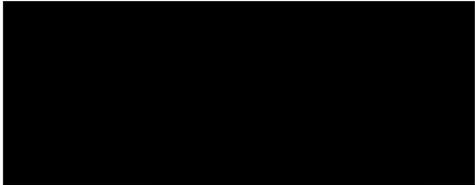
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[EAC 07 024 70149]

Office: Vermont Service Center

Date: **OCT 04 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: SELF-REPRESENTED

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.

for 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 (AAO) on appeal. The appeal will be dismissed.

The applicant is stated 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 record reveals that the applicant filed a late initial TPS application on September 22, 2003, under CIS receipt number WAC 04 002 53420. The Director, California Service Center, denied the application on April 27, 2004, because the applicant failed to submit evidence to establish eligibility for late initial registration for TPS. The applicant did not file an appeal from the denial decision.

The applicant filed a subsequent Application for Temporary Protected Status, on March 2, 2005, under CIS receipt number WAC 05 153 76380, and indicated that he was re-registering for TPS. The Director, California Service Center, denied that re-registration application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

A subsequent appeal was dismissed, on May 25, 2006, after the Chief of the AAO also concluded that the applicant had failed to establish that he was eligible for late initial registration for TPS. The AAO Chief noted that the applicant had failed to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence since March 9, 2001, to the date of filing.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on October 24, 2006, under CIS receipt number EAC 07 024 70149, and indicated that he was filing a new application for TPS. The Director, Vermont Service Center, denied that application on March 1, 2007, because the applicant failed to establish eligibility for late initial registration for TPS, and failed to establish his continuous residence, and his continuous physical presence in the United States.

It is noted that if the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17. In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, for this reason also, the director's decision to deny the application will be affirmed.

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 as designated by the Attorney General 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 this application with Citizenship and Immigration Services (CIS) on October 24, 2006.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On appeal, the applicant reasserts his eligibility for TPS, and states that he has been living in the United States since his initial entry. With his appeal, in an attempt to establish his continuous residence and his continuous physical presence, the applicant submits additional evidence in the form of:

1. A personal reference letter from [REDACTED] stating that she has known the applicant since 2001;
2. Photocopies of 4 money order receipts, and envelopes addressed to [REDACTED];
3. 7 money transfer receipts, two of which are dated in July and in October 2003, respectively, and five are dated in 2004;
4. 4 paystubs issued by [REDACTED], LLC, dated in years 2003 - 2006;
5. 5 paystubs from [REDACTED] all dated between January 2001 and September 2001;
6. 4 rent receipts, three dated in 2001, and one in September 2002; and,
7. Two W-2, Wage and Tax Statements, for 2003, and 2006, respectively.

The first issue in this proceeding is whether the applicant has established eligibility for late initial registration for TPS.

The evidence submitted does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for this reason must be affirmed.

The next issue in this proceeding is whether the applicant has established his continuous residence since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing, October 24, 2006.

The record of proceedings does not contain sufficient evidence to establish the requisite continuous residence and continuous physical presence. It is noted, for example, that the rent receipts submitted for the requisite period are dated January 1, 2001, May 1, 2001, October 1, 2001, and September 1, 2001; and, the paystubs are dated January 26, 2001, March 31, 2001, May 19, 2001, July 21, 2001, and September 2001. These receipts and paystubs do not show continuous residence and continuous physical presence for the requisite period. Also, the letter from [REDACTED] regarding the applicant's claimed presence in the United States since January 2001, is not supported by sufficient corroborative evidence for the requisite period. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. Moreover, affidavits are only specifically listed as

acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v). 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 for these reasons must 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.