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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] OFFICE: Vermont Service Center DATE: APR 02 2008
[EAC 07 006 77332]

INRE: 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 office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 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 TPS application on December 16, 2002, under Citizenship and Immigration Services (CIS) receipt number WAC 03 034 53292. The director denied that application on February 11, 2005, after determining that the application had failed to properly file a completed application in a timely manner. The record does not reflect that the applicant filed an appeal of the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, under CIS receipt number EAC 07 006 77332. The director denied the application because the applicant failed to establish that he was eligible for late registration for TPS. The director also found that the applicant had failed to establish his qualifying continuous residence and his continuous physical presence in the United States during the requisite periods.

On appeal, the applicant states that he entered the United States before January of 2001 and that he has been continuously residing in the United States since that time. He further states that he has responded to all of the requests for additional evidence on time.

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.

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. The designation of TPS for El Salvadorans has been extended several times, 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on September 5, 2006. 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.

On August 10, 2007, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(t)(2). The applicant was also requested to submit evidence establishing his qualifying continuous residence; his continuous physical presence in the United States; and the final court documentation for all criminal offenses committed in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States and court documents showing that he has been convicted of one misdemeanor offense.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on October 17, 2007.

On **appeal**, the applicant did not provide any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(t)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001 or his continuous physical presence in the United States since March 9, 2001. In response to the director's August 10, 2007 request, the applicant submitted pay stubs and bank statements for the years 2001 and 2002. The director noted that the applicant had failed to submit evidence pertaining to his continuous residence and continuous physical presence in the United States for the years 2003 through 2006 and denied the application.

On **appeal**, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

1. Copies of 2003 pay stubs and a W-2 Form from Preferred Paving Company, Inc.;
2. A copy of an IRS Notice of Advance Payment of Increase of the 2003 Child Tax Credit dated July 29, 2003;
3. Copies of 2004 and 2005 bank statements from Washington Mutual Bank;
4. A copy of a Mortgage Interest Statement from Countrywide Home Loans Interest for the **year** 2005;
5. A copy of a letter from DMV Vehicle Registration Renewal Notice dated July 8, 2005;
6. A copy of a letter from DMV Medical Examination Report dated May 30, 2006;
7. Copies of pay stubs from Bostick Company, Inc. dated October 20, 2006 and July 14, 2006; and,
8. Copies of electric bills from Southern California Edison dated June 10, 2006 and October 11, 2006;

These documents submitted on appeal together with evidence already in the record establish that the applicant continuously resided in the United States from February 13, 2001 and that he was continuously physically present from March 9, 2001 to the filing date of the TPS application. Consequently, the application has submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, this basis for the director's decision will be withdrawn.

However, as discussed above, the applicant remains ineligible for Temporary Protected Status, because he has not established eligibility for late registration as described in 8 C.F.R. § 244.2(f)(2).

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.

ORDER: The appeal is dismissed.