



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
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Office: VERMONT SERVICE CENTER

Date: **APR 03 2008**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), denied the initial application. The director denied a subsequent application for re-registration which is now before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the appeal will be sustained.

The applicant is a citizen and national of El Salvador who seeks 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 he was eligible for late registration.

On appeal, the applicant asserts that he did not receive any correspondence in conjunction with his initial application. He asserts that he filed for asylum in 1996, when he lived in California, moved, and filed for TPS when he got to Maryland. He submits additional documentation in support of his claim.

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 designated by the Attorney General 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 Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

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

The burden of proof is on 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 record reflects that the applicant filed a TPS application on March 29, 2001 - during the initial registration period. In support of his application, the applicant submitted photocopies of the following documents: - his Salvadoran national identification card; his birth certificate with translation; hospital records; and, documents relating to his application for asylum. On March 21, 2002, the director denied the application because the applicant failed to establish his continuous residence and continuous physical presence from February 13, 2001, through March 29, 2001, the date of filing of his application. The applicant filed an appeal with the AAO. On September 30, 2002, the AAO dismissed the appeal. On January 2, 2003, the applicant filed a motion to reopen the AAO's decision. That motion has been dismissed for being untimely filed in a separate decision.

During subsequent re-registration periods, the applicant filed applications that were accepted under the late filing provisions of 8 C.F.R. § 244.2(f). He also submitted additional evidence relating to his qualifying continuous residence and continuous physical presence. -

On December 12, 2005, the applicant filed the current TPS application - three years after the close of the initial registration for Salvadorans. Although the applicant filed it as a re-registration application, the director accepted it under the late filing provisions for TPS. On April 19, 2006, the director requested that the applicant submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director also requested that the applicant submit evidence establishing his residence in the United States from February 13,

2001, to the date of filing of the late-filed application. In response, the applicant submitted additional documentation. On July 12, 2006, the director determined that the applicant had successfully established his qualifying continuous residence and continuous physical presence, but denied the application because the applicant failed to establish he was eligible for late registration.

On appeal, the applicant asserts that he did not receive any correspondence in conjunction with his initial application. He asserts that he filed for asylum in 1996, when he lived in California, moved, and filed for TPS when he got to Maryland. He submits additional documentation in support of his claim.

The AAO notes that, although the applicant's second TPS application was not filed during the initial registration period, the first application was. If the applicant has satisfied the other requirements for TPS, the first application can be reopened *sua sponte*, in accordance with 8 C.F.R. 103.5(a)(5). A thorough review of the record reflects that the applicant has satisfied all the requirements for TPS. The director has determined that the applicant has satisfied the requirements for establishing his continuous residence and continuance physical presence. The applicant's national identification card and birth certificate establish his identity and his Salvadoran nationality. The record contains clear results from a recent fingerprint investigation of the applicant conducted by the Federal Bureau of Investigation (FBI).

An alien applying for TPS has the burden of proving that he or she meets the requirements listed above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The appeal is sustained. The initial application is reopened, *sua sponte*, and the application is approved.