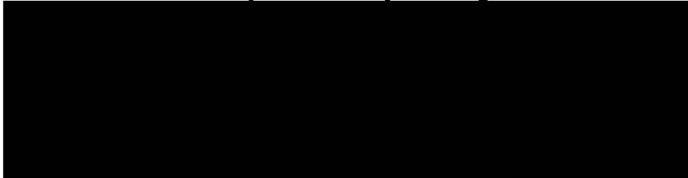




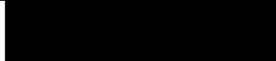
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Office: VERMONT SERVICE CENTER

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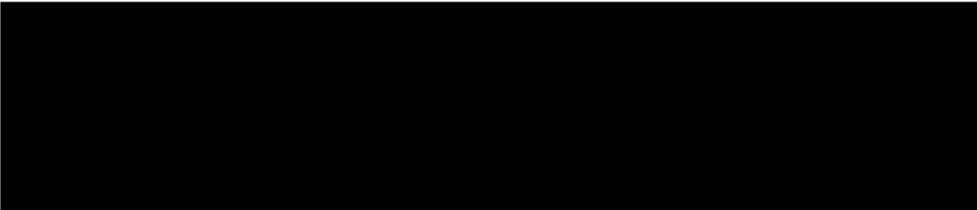
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen 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 found that the applicant had established his qualifying continuous residence and continuous physical presence in the United States, but denied the application because the applicant failed to establish he was eligible for late registration.

On appeal, counsel for the applicant asserts that the applicant is being asked to prove he qualifies for late registration, when, in fact, he was first granted TPS in June 2001. Counsel asserts that, thereafter, every time the applicant tried to re-register for TPS, his applications were denied for failure to prove that he registered properly the first time. Counsel asserts that the first re-registration denial was flawed because the applicant had previously been granted TPS.

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 TPS 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
 - (t) (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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until 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 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 (CQI0210) on August 11, 2000 - seven months prior to the initial registration period of the most recent designation for Salvadorans. The applicant filed the application with the Newark District Director, not with the director, YSC. The Newark District Director accepted the application and issued a receipt for a Form 1-821, Application for TPS; a Form 1-765, Application for Employment Authorization; and Form FD-258, for fingerprints.

The applicant had previously been granted TPS, during a previous designation for Salvadorans that expired on June 20, 1992. The applicant was also granted Deferred Enforced Departure (DED), a related form of temporary relief from removal granted to Salvadoran TPS registrants, on July 29, 1992, and again, on September 9, 1993. That designation of DED expired on December 31, 1994. These earlier TPS and DED programs are unrelated to the March 9, 2001, TPS designation for El Salvador.

As the current TPS designation for El Salvador did not go into effect until March 9, 2001, the applicant's prior counsel appeared to be erroneously attempting to renew the applicant's DED status when he filed the Form 1-821 with the Newark District Director on August 11, 2000. The applicant's prior counsel indicated on the Form 1-821 that this was the applicant's application for annual re-registration. On June 13, 2001, the Newark District Director erroneously issued the applicant an Employment Authorization Document (EAD)

indicating that the applicant was an approved DED registrant. By this time, TPS was again available to Salvadorans under the current designation.

The applicant filed several subsequent re-registration applications that the director, VSC, treated as late-initial registration applications. The director denied these applications on the basis that the applicant did not submit evidence that he qualified for late registration.

The applicant filed the current application on August 31, 2006 (EAC 06 336 86004). On December 22, 2006, the director requested that the applicant submit evidence that he qualified for late registration. On February 12, 2007, the director denied the application, stating that CIS records showed that the applicant had been granted TPS under the previous designation for El Salvador, but that he had not submitted an initial application for the current TPS designation until January 24, 2003. The director stated that the applicant did not file an application during the initial registration period from March 9, 2001, to September 9, 2002, and that he was not otherwise eligible for late registration.

On appeal, counsel asserts that the applicant is being asked to prove he qualifies for late registration, when, in fact, the TPS application he filed in August 2000, was approved in June 2001. Counsel asserts that, thereafter, every time the applicant tried to renew his application, it was denied for failure to prove that he registered properly the first time. Counsel asserts that the first re-registration denial was flawed because the applicant had previously been granted TPS.

It appears that the applicant assumed that he had been granted TPS under the current designation, when the Newark District Director issued him an EAD on June 13, 2001. It also appears that the director, VSC, was unaware of the August 11, 2000, (CQ 1021 0) TPS application that the applicant filed with the Newark District Director. The director, VSC, believed that the applicant had not submitted a TPS application under the new designation until January 24, 2003, and was not otherwise eligible for late registration.

The record of proceeding indicates that the applicant filed an application for TPS on August 11, 2000. The record also contains a letter from the applicant's prior counsel, indicating that the application was re-submitted on March 9, 2001. Therefore, the applicant filed a TPS application during the initial registration period. The applicant has satisfied the requirements for establishing his continuous residence and continuance physical presence from the required dates in 2001 to the date of filing of his initial application. The record contains a photocopy of the biographical page of the applicant's passport, which establishes his identity and Salvadoran nationality. The record also contains results from a recent fingerprint investigation of the applicant conducted by the Federal Bureau of Investigation (FBI) issued on September 27, 2006, indicating no criminal record that would bar the applicant from TPS eligibility. The applicant has satisfied all other requirements for TPS. Therefore, the initial application and subsequent re-registration applications are approved.

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 and the applications are approved.