



U.S. Citizenship  
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FILE:



OFFICE: Vermont Service Center

DATE: **JAN 14 2008**

[EAC 02 16950283]  
[EAC 04 055 53636]

INRE:

Applicant:



APPLICATION: . Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 V.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:** An initial application was denied by the Director, Vermont Service Center (VSC). The re-registration application was then denied by the VSC director. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The director's decision will be withdrawn and the appeal will be sustained.

The applicant is a native and 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 applicant filed his initial TPS application on April 11, 2001 [EAC 02 16950283], under file \_\_\_\_\_ — It is noted that the applicant filed that TPS application with the Newark District Office. The Director of the VSC denied the application on May 7, 2003, due to abandonment because the applicant failed to respond to a request for evidence.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on November 14, 2003. On March 24, 2004, the VSC director sent a Notice of Intent to Deny (NOI) and requested the applicant to submit evidence to establish his eligibility for TPS late registration. The applicant was also requested to submit evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On April 24, 2004, the applicant responded to the request. The VSC director determined that the evidence submitted did not overcome the grounds for denial, and therefore, denied the application on July 13, 2004.

On appeal, the applicant requests a reconsideration of his TPS application and submits additional documentation.

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.

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 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 have 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.P.R. § 244.9(b).

On appeal, the applicant states that he complied with the director's request for evidence. The applicant also provides additional documentation in support of his eligibility for TPS.

A complete review of the record of proceedings reflects that the applicant has provided sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence since March 9, 2001, to the date of filing his application. Given that the record fails to reflect any other ineligibility issues, the VSC director's decision will be withdrawn and the initial application will be approved.

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 met this burden.

**ORDER:** The VSC director's decision is withdrawn. The appeal is sustained and the applications are approved.