



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[EAC 04 024 51765]

Office: VERMONT SERVICE CENTER

Date: **JAN 16 2008**

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:  
[REDACTED]

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 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 director denied the application because the applicant failed to establish he was eligible for late registration. The director further concluded that the applicant had failed to establish that he was a national of a foreign state designated by the Attorney General. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts that he has been in the United States since 2001 and is submitting evidence to prove it.

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 El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed a Form I-821, Application for Temporary Protected Status, with the Vermont Service Center on September 14, 2001 [EAC 02 007 52097]. The director denied this application on March 24, 2003, because the applicant failed to establish that he had resided continuously in the United States since February 13, 2001, or that he was continuously present in the United States since March 9, 2001. The applicant did not file either a motion or an appeal during the requisite timeframe.

The applicant filed this current application with Citizenship and Immigration Services (CIS) on October 8, 2003. 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 February 23, 2004, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence that he is a national of El Salvador and evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on May 21, 2004.

On appeal, the applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(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 that he is a national of a foreign state designated by the Attorney General for TPS.

The regulation at 8 C.F.R. § 244.9(a) provides, in pertinent part:

- (1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state . . . [T]he applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of:
  - (i) Passport;
  - (ii) Birth certificate accompanied by photo identification; and/or
  - (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant submitted no evidence to establish his nationality. Accordingly, the director's decision to deny the application on this ground is affirmed.

The third 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.

As stated above, the applicant was requested on February 23, 2004, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. With his application and in response to the request, the applicant provided the following documentation:

1. A copy of an October 28, 2002, statement from [REDACTED] in which he stated that the applicant had lived with him at [REDACTED] in New York from February 10, 2001, to the date of the statement.
2. Copies of employment authorization cards valid from November 20, 2001, to September 9, 2002, and from September 10, 2002, to September 9, 2003.
3. A copy of a Form 1040, U.S. Individual Income Tax Return, for the year 2002. The return is not signed and contains no indication that it was filed with the Internal Revenue Service (IRS).

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 21, 2004.

On appeal, the applicant reasserts his claim and submits the following documentation:

4. A copy of an undated letter from [REDACTED], signed by [REDACTED]. The letter does not indicate [REDACTED]'s position with the company or his authority to sign documents on its behalf. According to [REDACTED] the applicant was a full-time employee with the company from February 13 to June 10, 2001. The applicant also submits copies of employee earnings statements from Berimex Corporation, showing earnings for the period February 12 to February 25, 2001.
5. A partial copy of a receipt apparently issued to the applicant. The receipt is dated June 7, 2001, but does not fully identify the vendor or the address at which it is located.
6. Unsigned copies of Forms 1040 for the years 2001 and 2003. The tax returns are not signed or dated and provide no indication that they were filed with the IRS.
7. A copy of a 2003 Form W-2, Wage and Tax Statement, issued to the applicant by Planet Aid, Inc. in Kearny, New Jersey.

The employment letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in the form of an affidavit, is not attested to under penalty of perjury, and does not provide the address where the applicant resided during the period of his employment. As noted above, the income tax returns submitted by the applicant do not provide contemporaneous documentation of his presence and continued residency in the United States as they are not signed and do not reflect that they were filed with the IRS.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since

March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also 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 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.