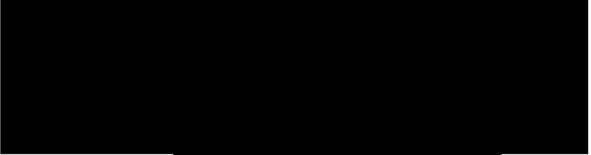




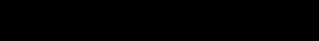
U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy

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FILE:



Office: VERMONT SERVICE CENTER

Date:

JAN 22 2008

[EAC 05 19671167]

INRE:

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Yermont Service Center (YSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, who claims to be a native and citizen of El Salvador, 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 that he was eligible for late registration. The director also found that the applicant had failed to establish his **qualifying** continuous physical presence in the United States during the requisite time period.

On appeal, counsel for the applicant submits a brief statement and 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 Temporary Protected Status only if such alien establishes that he:

- (a) Is a national, as defined in section IOI(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 § 244.3;
- (e) Is not ineligible under § 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 since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The applicant filed his Form 1-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on February 16, 2005 – more than two years and five months after the initial registration period had ended.

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.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

In support of his initial application, the applicant submitted: a medical bill indicating that he received dental services in Danville, Virginia on January 29, 2001; photocopies of account statements from Auto Villa, Danville, Virginia, indicating payments made on December 4, 2000, January 2, 2001, and February 1, 2001; and, an insurance document indicating his automobile coverage from March 11, 2000 to March 11, 2001.

On October 13, 2005, the director requested the applicant to submit evidence establishing his eligibility for late registration, as well as his **qualifying** continuous physical presence in the United States. The record reflects that the applicant failed to respond to the director's request.

The director determined that the applicant had failed to establish that he was eligible for late registration, and had failed to establish his **qualifying** continuous physical presence in the United States during the requisite time period. The director denied the application on January 19, 2007.

On appeal, counsel for the applicant asserts that the applicant has been continuously physically present in the United States since March 9, 2001, and is, therefore, eligible to take advantage of the late registration provisions for IPS. In support of the appeal, counsel submits photocopies of the following additional documentation: a money order receipt issued to the applicant on June 11, 2001; a medical bill indicating that the applicant received dental services in Danville, Virginia on August 13, 2001; insurance documentation indicating coverage for the period March 11, 2000 to March 11, 2001, and March 11, 2001 to March 11, 2002; a Social Security statement, dated July 1, 2002, showing the applicant's wages each year from 1995 through 2001; a bank account statement dated September 2001; receipts dated May and August 2001; and, Virginia Motor Vehicle registration forms indicating purchase of two vehicles on August 31, 1996, and May 3, 1999, with registration valid from March 1999 through May 2002.

Based on the documentation submitted, it is concluded that the applicant has submitted sufficient evidence to establish his **qualifying** continuous physical presence in the United States from March 9, 2001, to the date of filing his Form 1-821 on February 16, 2005. Therefore, the decision of the director to deny the application on the ground that the applicant had failed to establish his **qualifying** continuous physical presence will be withdrawn.

However, the record confirms that the applicant filed his application after the initial registration period had ended. Although the applicant has submitted evidence to establish his qualifying continuous residence and continuous physical presence in the United States, this evidence does not mitigate the applicant's failure to file his Form 1-821 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(t)(2). Consequently, the director's decision to deny the application for IPS on this ground will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish his nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1). 8 C.F.R. § 244.9 states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(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. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the 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: (Amended 11/16/98; 63 FR 63593)

- (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.

Although the record contains a copy of the applicant's birth certificate, with English translation, he has not provided a photo-identification document. Therefore, the application must also be denied for this reason.

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 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 failed to meet this burden.

It is noted that CIS records reflect that the applicant filed a Form 1-589, Request for Asylum in the United States, on May 25, 1994. That application was denied on December 19, 1994. On September 6, 1995, an Immigration Judge in Arlington, Virginia, ordered the applicant deported to El Salvador. That order remains outstanding.

ORDER: The appeal is dismissed.