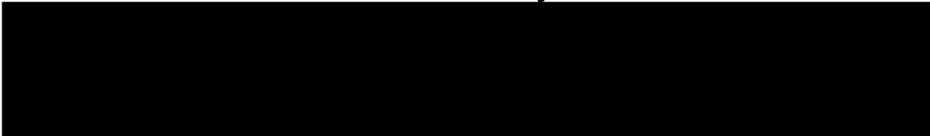




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 07 005 81303]

OFFICE: Vermont Service Center

DATE: JAN 24 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: 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.


for 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 record of proceeding reveals that the applicant filed an initial TPS application, under Citizenship and Immigration Services (CIS) receipt number WAC 05 208 90316 on February 25, 2005, which is subsequent to the registration period. The director denied the application on June 20, 2006 because the applicant failed to establish prima facie eligibility for late initial registration. The record does not reflect that the applicant appealed the director's decision.

The applicant filed the current TPS application as a new application. Because the initial application was denied, the subsequent application cannot be considered as a re-registration; therefore, this application can only be considered as a late registration.

The director denied the application on February 14, 2007 because the applicant failed to establish he was eligible for late registration. 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, and that he had failed to submit evidence to establish his nationality.

On appeal, the applicant asserts his needs to work legally in the United States so that he can help his family economically.

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 Salvadorans was from March 9, 2001, through September 9, 2002. 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 appeal, the applicant asks that the CIS approve his application.

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 his continuous residence in the United States since February 13, 2001 or his continuous physical presence in the United States since March 9, 2001. The applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response the applicant provided the following documentation:

1. A copy of the applicant's birth certificate and an English translation;
2. A letter dated May 10, 2006 from [REDACTED] attesting that he has known the applicant since May 2001 and that the applicant had done some construction jobs for him;
3. A letter dated May 10, 2006 from [REDACTED] attesting that the applicant has been a member of his congregation since 2000 and that the applicant attends his Church and participates in all of the activities in a very committed way; and,
4. A letter dated May 11, 2006 from [REDACTED] stating that she has known the applicant since 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 14, 2007.

On appeal, the applicant requests that his TPS application be approved.

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. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support his assertions of being in the United States during the requisite time period since he claimed to have been present since October of 2000. The applicant submitted affidavits in an effort to establish his residence and physical presence in the United States during the requisite time periods. Although the affiants state in the affidavits that they have known the applicant to be present in the United States since 2000, there has been no corroborative evidence to substantiate their assertions. Moreover, affidavits are only specifically listed as

acceptable evidence for proof of employment, and attestations by church, unions, or other organizations of the applicant's residence as specifically described in 8 C.F.R. §244.9(a)(2)(i) and (v).

Finally, the applicant has failed to establish his national identity. Section 8 C.F.R. § 244.9 requires applicants to submit all information requested in the instructions on the forms and as may be requested by CIS. It also provides that acceptable forms of evidence of nationality are:

- i. Passport;
- ii. Birth Certificate accompanied by photo identification; and/or
- iii. Any national identity document from the alien's country of origin bearing a photo and/or fingerprint.

In this case the applicant has only submitted a birth certificate. This is not sufficient to establish national identity. Therefore, the director's decision to deny the application on this ground is also affirmed.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence 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.

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. The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.