

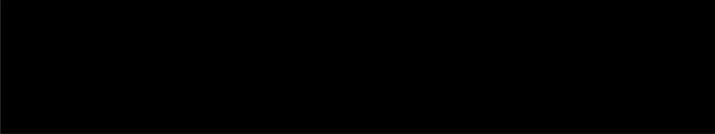
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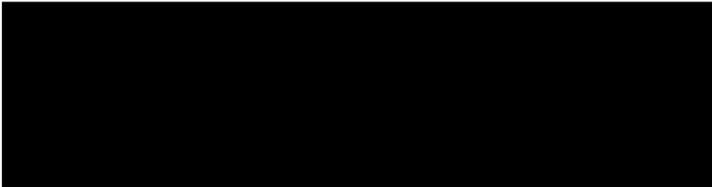


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **JAN 30 2008**  
[EAC 06 362 74110]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the  
Immigration and Nationality Act (the 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 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 denied the application because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States and had failed to establish that he was eligible for late registration.

On appeal, counsel for the applicant asserts that he is eligible for late registration as the child of a TPS registrant and that he has been continuously present in the United States since April 20, 1998.

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 designated by the Attorney General 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 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 by the Secretary of Homeland Security, 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 his initial TPS application on August 31, 2006 – almost four years after the close of the initial registration period for Salvadorans. In support of his application, counsel submitted a memo asserting that the applicant was eligible for late registration as the child of an alien eligible to be a TPS registrant. In addition, counsel submitted a copy of the identification page of the applicant's Salvadoran passport, issued in Boston, on August 16, 2005; the applicant's birth certificate, with translation, indicating that he was born on November 14, 1989, to [REDACTED]; and, copies of Employment Authorization Documents (EADs) of the applicant's mother, alien registration number [REDACTED] issued in conjunction with her asylum application pending with CIS since November 28, 1995. Finally, counsel submitted a letter from the principal of the Accelerated Learning Laboratory School in Worcester, Massachusetts, dated August 28, 2006, which stated that the applicant registered with the school on August 25, 1998.

On February 7, 2007, the director informed the applicant that he had not submitted any proof that he was linked to his mother's asylum application and that the letter from his school listed his date of birth and when

he registered for school, but it did not cover the complete requisite time period required. The director requested that the applicant submit evidence that he was eligible for late registration and evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant did not respond to the director's request.

On May 1, 2007, the director denied the application, finding that the applicant had established that he was the child of an alien currently eligible to be a TPS registrant, but that he had not submitted sufficient documentary evidence to establish his qualifying continuous residence and continuous physical presence. The director also found that the applicant had failed to establish that he was eligible to take advantage of the late registration provisions of the TPS regulation.

On appeal, counsel for the applicant reasserts his eligibility for TPS based on his relationship to his mother. The applicant submits the previously submitted letter from his school, as well as his vaccination record, showing vaccines given in 1998 and 1999; his report card from September 1999 to June 2000; his 5th grade school progress report, dated June 21, 2001, showing a total of one absence; his 6th grade progress report for the 2001-2002 school year, indicating a total two absences; his 7th grade progress report for the 2002-2003 school year, showing a total of two absences; his 8th grade progress report for the 2003-2004 school year, showing a total of four absences; his 9th and 10th grade report card for the 2004-'05 and 2005-'06 school years; and, his mother's TPS approval notice, dated May 3, 2007.

The applicant is the child of an alien who is currently a TPS registrant and is, therefore, eligible to file a late application for TPS under 8 C.F.R. § 244.2(f)(2)(iv). The applicant's school records show that he was residing and continuously physically present in the United States from at least August 25, 1998, to the present. Therefore, the documentation submitted on appeal is sufficient credible evidence to establish his continuous residence and continuous physical presence requirements of 8 C.F.R. § 244.2(b) and (c). The applicant's passport establishes his Salvadoran nationality and his identity. The record contains recent fingerprint results, which indicate no criminal record that would bar the applicant from TPS eligibility. Therefore, the applicant is eligible for TPS, the director's decision to deny the application will be withdrawn, and, his application will be approved.

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 met this burden.

ORDER:        The appeal is sustained.