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U.S. Department of Homeland Security  
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Washington, DC 20529



**U.S. Citizenship  
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Services**

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **JUL 29 2008**  
[EAC 06 328 77058]

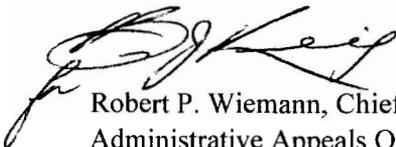
IN RE: Applicant: [REDACTED]

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.

  
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 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 director determined that the applicant failed to establish he: 1) had been continuously physically present in the United States since March 9, 2001; and 2) was eligible for late registration. The director also determined that the applicant had failed to establish his nationality and found that the applicant had been convicted of two or more misdemeanors in the United States. The director, therefore, denied the application.

On appeal, the applicant states that he has established that he is a citizen and national of El Salvador. The applicant also claims that he was not convicted of two or more misdemeanors. Furthermore, the applicant submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

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 as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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.

*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.

*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.

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony" of this section. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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, with the latest extension granted until March 9, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on August 10, 2006.

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 record of proceeding confirms that the applicant filed his TPS application on August 10, 2006, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On May 7, 2007, the applicant was informed that he had failed 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 informed the applicant that he had failed to submit evidence establishing his nationality and identity, and his continuous physical presence in the United States from March 9, 2001, to the filing date of the application. In addition, the applicant was informed that the record reflected that he had been convicted of two or more misdemeanors. Therefore, the director denied the application.

On appeal, the applicant states that he has established that he is a native of El Salvador and that he has not been convicted of two or more misdemeanors. The applicant also submits evidence in an attempt to establish his continuous physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file his TPS application 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 failed to establish his eligibility for late registration will be affirmed.

The remaining issues in this proceeding are whether the applicant has established his continuous physical presence in the United States since March 9, 2001, whether he has been convicted of two or more misdemeanors, and whether he has established that he is a citizen of El Salvador.

The record reveals:

1. On May 25, 1994, the applicant was convicted of "Drive with Suspended License."
2. On February 20, 1998, the applicant was convicted of "Fail to Leave Information/Accident."
3. On September 26, 2000, the applicant was convicted of "Under the Influence Alcohol/Drug in Vehicle."

As stated above, the applicant was informed on May 7, 2007 that he had failed to establish his qualifying continuous physical presence in the United States. In support of his TPS application, the applicant submitted the following documentation:

1. Copies of 2001, 2002, 2003, and 2004 tax documents.

2. Copies of pay stubs dated January 26, 2001, February 23, 2001, March 30, 2001, April 27, 2001, May 25, 2001, June 22, 2001, July 27, 2001, August 31, 2001, September 28, 2001, October 19, 2001, November 30, 2001, December 4, 2001, January 25, 2002, February 15, 2002, March 29, 2002, April 25, 2002, May 31, 2002, June 28, 2002, July 26, 2002, August 23, 2002, September 20, 2002, October 25, 2002, November 22, 2002, December 20, 2002, January 17, 2003, February 21, 2003, April 25, 2003, May 16, 2003, June 27, 2003, July 18, 2003, August 29, 2003, September 19, 2003, October 31, 2003, November 28, 2003, December 12, 2003, January 23, 2004, February 20, 2004, March 19, 2004, April 30, 2004, May 14, 2004, June 25, 2004, July 23, 2004, August 20, 2004, September 17, 2004, October 15, 2004, November 26, 2004, December 23, 2004, January 7, 2005, March 2, 2005, March 23, 2005, April 20, 2005, June 1, 2005, June 15, 2005, and July 20, 2005.

The applicant also resubmitted documents that are already part of the record.

The director concluded that the applicant had failed to establish his qualifying physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant submits:

3. Copies of pay stubs dated June 7, 2006, June 21, 2006, June 28, 2006, August 2, 2006, February 21, 2007, February 28, 2007, March 7, 2007, March 28, 2007, and June 7, 2006.
4. Copies of the applicant's El Salvadoran passport and birth certificate with English translation, and a copy of the court disposition for the applicant's May 25, 1994 conviction.

The applicant has not submitted sufficient evidence to establish his continuous physical presence in the United States from March 9, 2001 to the filing date of his TPS application, in this case August 10, 2006. Specifically, the applicant has failed to provide any evidence of his presence in the United States from July 20, 2005 to June 7, 2006. 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 temporary protected status on these grounds will also be affirmed. The applicant's passport and birth certificate establishes his nationality. Therefore, this basis for the director's denial will be withdrawn. In support of his claim that his 1994 conviction for driving without a license was dismissed, the applicant submitted court documents regarding that arrest. That document does show that the charge of "Driving with a Suspended License" (14601.2(A)) was dismissed. However, the document also indicates that the applicant was convicted of "Driving with a Suspended License" (14601.1(A)), a misdemeanor. In addition, the record reflects that the applicant was convicted of two other misdemeanors that the applicant does not address. Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

It is further noted that the record of proceeding reflects that on April 18, 2008, an immigration judge ordered the applicant removed from the United States to El Salvador.

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.



**ORDER:** The appeal is dismissed.