

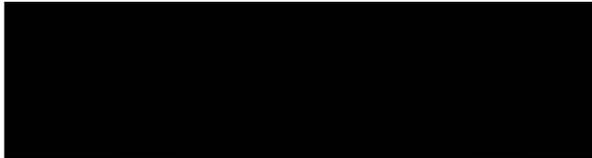
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 17 2008  
[EAC 06 208 71235]

INRE: Applicant: [REDACTED]

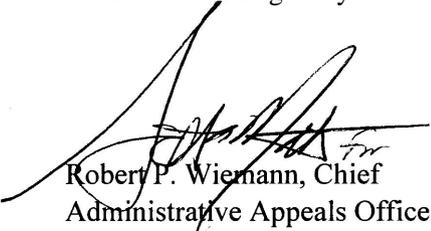
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 applicant's initial TPS application was denied by the Director, Nebraska Service Center. A subsequent TPS application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated to be 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 record of proceedings reveals that the applicant filed a late initial TPS application, on September 8, 2003, under Citizenship and Immigration Services (CIS) receipt number LIN 03 266 50545. The Director, Nebraska Service Center, denied that application on December 19, 2003, because the applicant had failed to submit evidence to establish his eligibility for late registration, his continuous residence and continuous physical presence in the United States during the requisite time periods, and his nationality and identity. The applicant filed an appeal to the AAO on January 13, 2005. The AAO dismissed the appeal on August 22, 2005, after determining that the applicant had failed to establish his eligibility for TPS late registration as well as his qualifying continuous residence and continuous physical presence in the United States.

The applicant filed the current TPS application on April 25, 2006, which is subsequent to the initial registration period for El Salvadorans. The Director, Vermont Service Center, denied the application on February 27, 2007, 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 residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel asserts the applicant's claim of eligibility for TPS.

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. A subsequent extension of the TPS designation has been granted with validity 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 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. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS), on April 25, 2006.

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(£)(2) above.

On appeal, counsel states that the applicant is eligible for late registration because he has demonstrated prima facie evidence of eligibility for TPS.

Contrary to counsel's assertions, the applicant has not demonstrated prima facie evidence of eligibility for TPS, and therefore is not eligible for late registration. The record shows that the applicant submitted evidence in an attempt to demonstrate his continuous residence and continuous 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(£)(2) above. 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, and his continuous physical presence in the United States since March 9, 2001.

The applicant submitted the following documentation along with his previous appeal filed on July 13, 2004:

1. A copy of an Immigration and Naturalization Service Notice to Appear dated October 5, 2005;
2. A copy of a handwritten letter from [REDACTED] in which she stated that the applicant resided at [REDACTED], Minnesota, from January 1, 2001, to March of 2003;
3. An affidavit from [REDACTED] in which he stated that the applicant is his son, and that to the best of his knowledge, the applicant has been in the United States since December of 2000, living with him; and,
4. Copies of handwritten monthly rent receipts from [REDACTED] for the premises at [REDACTED] Minnesota, and dated from January 3, 2001, through March 7, 2003.

Along with his re-registration application, the applicant resubmitted copies of the handwritten rent receipts. He also submitted the following documentation:

5. An affidavit from [REDACTED], dated December 29, 2005, in which he stated that the applicant and his father rented an apartment from his mother from January 1, 2001 to March of 2003; and,
6. An affidavit from [REDACTED] dated December 18, 2005, in which she stated that the applicant came to live in her apartment on December 23, 2000, and left approximately one week later.

On appeal, counsel states that the applicant has submitted sufficient evidence to demonstrate his residence and physical presence in the United States. It is noted that counsel stated on the Notice of Appeal to the

Administrative Appeals Office (AAO), Form 1-290B, filed March 26, 2007, that an additional 60 days was needed to submit a brief. However, the record does not reflect receipt of an appeal brief: Therefore, the record must be considered complete.

The applicant submitted affidavits in an effort to establish his residence and physical presence in the United States during the requisite time periods. The affiants state that they have known the applicant to be present in the United States since December of 2000, and the applicant claims to have been present in the United States since June of 2000. It is reasonable to expect that he would have some other type of contemporaneous evidence to support these assertions. The affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States.

The copies of the handwritten rent receipts provided by the applicant are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying residence or physical presence in the United States. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

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.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his nationality and identity. The applicant has furnished a copy of a birth certificate and English translation; however, he has not submitted a national identity document from his country bearing a photograph and/or fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provision of 8 C.F.R. § 244.9(a)(1). Therefore, the application must also be denied for this reason.

It is also noted that the applicant was placed in removal proceedings and issued a Notice to Appear, dated October 5, 2005.

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 reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.