

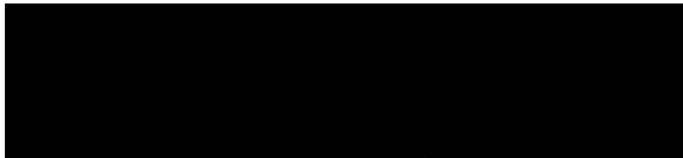
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u.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



FILE: [REDACTED]
[EAC 03 260 56975J

Office: VERMONT SERVICE CENTER

Date: **MAY 27 2008**

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vennont Service Center. A subsequent appeal was remanded by the Director, Administrative Appeals Office (AAO). The application was denied again by the Director, Vennont Service Center. The matter is now before the Administrative Appeals Office (AAO) 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 initially denied the application on January 27, 2004; however, the director's decision did not clearly indicate the specific basis for the denial. Consequently, the AAO remanded the decision for the issuance of a new decision that sets forth the specific reasons for the denial.

On May 23, 2007, the director determined that the applicant failed to establish he: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director also determined that the applicant failed to establish that he is a national of El Salvador. The director, therefore, denied the application.

On appeal, the applicant states that he is submitting the correct appeal fee. The applicant also 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
- (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.

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 September 17, 2003. The applicant filed his initial application on April 23, 2001. That application was denied as abandoned on April 7, 2003 because the applicant failed to respond to a request for evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. On April 19, 2003, the applicant filed a motion to reopen the director's decision. On June 23, 2003, the director denied the motion because the applicant failed to meet one of the three criteria for which CIS may reopen an abandoned petition.

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 application 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 November 17, 2003, the applicant was provided the opportunity 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 requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant failed to respond to the notice. Therefore, the director denied the application.

On appeal, the applicant admits that he did not respond to the request for additional evidence, but states that he never received the notice. However, the notice was sent to the applicant's address of record. There is nothing in the record to indicate that the notice was returned to CIS by the U.S. Postal Service as undeliverable. The applicant also submits evidence in an attempt to establish his continuous residence and 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 second and third issues in this proceeding are 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.

As stated above, the applicant was requested on November 17, 2003 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant failed to respond to the notice.

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

1. A copy of the applicant's El Salvadoran passport.
2. Copies of money transfer receipts dated August 15, 2000, and September 20, 2001.
3. Copies of a Social Security Administration statement for 2001 and 2002 and a 2003 W-2, Wage and Tax Statement.

4. A copy of a Wachovia Bank Premium Personal Savings statement for the period from July 1, 2003 through September 30, 2003.
5. A letter from [REDACTED]
6. A copy of a Shipping Form from Continental World Shipping, Inc. dated December 10, 2000.
7. A copy of an Employee Separation Report from an unidentified employer dated September 19, 2002.
8. Copies of hand-written receipts dated September 20, 2000, December 20, 2000, and January 11, 2001.
9. Copies of an earnings statement from an unidentified employer dated December 16, 2005.

The passport establishes the applicant's nationality and identity. **Ms. states** that she has known the applicant for 10 years and knows that he has been continuously in the United States since August 2000. However, this statement has little evidentiary weight or probative value. This statement is not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided.

The money transfer receipt dated August 15, 2000 and the Shipping Form from Continental World Shipping, Inc. dated December 10, 2000 indicate the applicant was present in the United States subsequent to the requisite dates to establish continuous residence and continuous physical presence in the United States. The hand-written receipts are all similarly dated. Furthermore, these receipts are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided.

The Social Security Administration statement indicates the applicant was present in the United States during 2001. However, this document cannot establish the applicant's continuous residence and continuous physical presence in the United States during the qualifying period. The Wachovia Bank Premium Personal Savings statement indicates dates of July 1, 2003 through September 30, 2003, and is the earliest date presented, on appeal, as evidence of the applicant's presence in the United States during the requisite period. Therefore, the evidence presented is of little or no probative value.

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