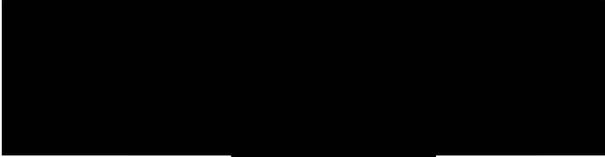




U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: Vermont Service Center DATE: **HAY 28 2008**
[EAC 07 070 50932]

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.

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 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 denied the application 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.

On appeal, counsel states that the applicant is a minor child of a TPS registrant; therefore, he has met one of the four conditions for late registration described in 8 C.F.R. § 244.2(f)(2). Counsel also contends that the applicant does not have to establish continuous physical presence since he is eligible for late initial registration.

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. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on January 12, 2007. 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 March 22, 2007, the applicant was requested 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 qualifying continuous residence and continuous physical presence in the United States. The director determined that the applicant had failed to establish he was eligible for TPS and denied the application on May 30, 2007.

On appeal, counsel reasserts the applicant's eligibility for TPS.

The applicant submitted copies of Employment Authorization Cards issued to _____ a copy of his Salvadoran passport; and, a copy of his birth certificate and an English translation. It is noted that the applicant is a minor child of a TPS registrant and, therefore, eligible for late initial registration. 8 C.F.R. § 244.2(f)(2)(iv). Consequently, the director's decision on this ground will be withdrawn.

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.

On appeal, the applicant, through counsel, states that the CIS decision is erroneous in that the applicant is not required under the regulations to prove physical presence since 2001 since he was filing a late registration application based on his mother's TPS status and that he is a minor child of a TPS registrant.

While regulations may allow children of TPS beneficiaries to file their application after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. The child is still required to meet the continuous residence and continuous physical presence requirements as provided in 8 C.F.R. §§ 244.2 (b) and (c). Moreover, the record reveals that the applicant was apprehended by the U.S. Border Patrol as he attempted to enter the United States on March 1, 2005, which is subsequent to the eligibility period. Consequently, the applicant did not reside in the United States as of February 13, 2001, and was not physically present in the United States from March 9, 2001 to the filing date of this application. Therefore, he could not have satisfied the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). The director's decision to deny the application for temporary protected status on these grounds will 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.

ORDER: The appeal is dismissed.