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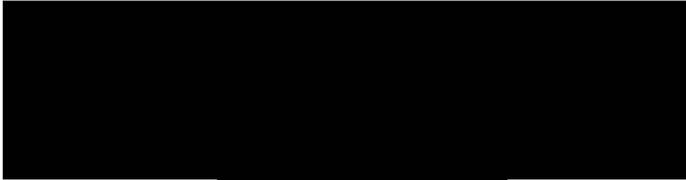
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **OCT 08 2008**
[WAC 01 173 50209]

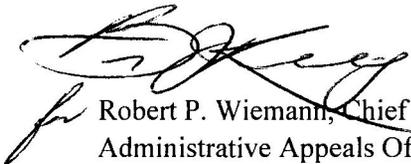
IN RE: Applicant: [REDACTED]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. An untimely appeal was treated as a Motion to Reopen and the application was denied again by the Director, California Service Center. The applicant appealed the director's decision on the motion and it 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 had failed to submit evidence of his identity, and had failed to submit sufficient evidence to establish he had continuously resided in the United States since February 13, 2001, and that he had been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On motion, the applicant stated that he never received the notice of denial. The application was reopened and the Director, California Service Center, issued a Notice of Intent to Deny on October 18, 2007. The applicant failed to respond to the notice and the decision was denied again by the Director, California Service Center, on March 18, 2008.

On appeal, the applicant states that he did respond to the request for additional information and his case should be reopened.

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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 his initial TPS application on April 3, 2001.

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 record reveals that the applicant filed a TPS application during the initial registration period on April 3, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 173 50209. On January 9, 2004, the director requested the applicant to submit evidence of his continuous residence in the United States from February 13, 2001 and his continuous physical presence in the United States from March 9, 2001, through the date he filed the TPS application. The record reflects that the notice was mailed to the applicant's address of record, which he still maintains at time of appeal. The notice was not returned as undelivered. The Director, California Service Center, denied the application for abandonment on April 12, 2004, because the applicant failed to respond to the request for evidence. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen within 30 days.

The applicant filed an appeal which was treated as a motion. The director reopened the proceedings and issued a new notice of intent to deny on October 18, 2007, requesting that the applicant provide evidence of his identity and evidence that he had met the continuous residence and continuous physical presence criteria for TPS. The director determined that the applicant had failed to respond to the notice and had failed to submit evidence to establish his identity and his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, the applicant asserts that he responded to the Notice of Intent to Deny. The record does contain information submitted by the applicant in response to the notice. That evidence will be addressed here. The applicant submitted:

1. Copies of his birth certificate, with English translation, and his El Salvadoran identity document, "Cedula".
2. Copies of money order receipts dated October 15, 2000, October 28, 2000, December 9, 2000, July 3, 2006, and March 13, 2007, and copies of undated money order receipts.
3. A copy of a California Identification Card issued on June 27, 2002.
4. Copies of an envelope with a date-stamp of August 3, 2002 on the reverse side of the envelope, but no postage stamp, a Bank of America customer receipt dated October 28, 2003, a copy of a notice from El Camino Real Community Adult School dated March 25, 2003, a hospital receipt dated March 19, 2003, a notice from West Hills Hospital & Medical Center dated March 19, 2003, an Annual Renewal Notice from COSTCO dated January 2004, a Customer Agreement Form from Verizon dated February 18, 2004, Cingular Wireless bills for the billing cycles ending on May 27, 2005 and November 27, 2005, a Time Warner cable bill dated November 27, 2005, part of a Rental Agreement scheduled to begin on June 1, 2005, a rental bill dated June 1, 2006, Bank of America Account Statements dated March 16, 2007, April 16, 2007, a Certificate of Baptism for the applicant's son dated April 28, 2007, and the Immunization Record of the applicant's son indicating inoculations on July 19, 2006, September 21, 2006, November 20, 2006, and June 27, 2007.
5. Copies of 2006 Tax documents.
6. Copies of earnings statements dated April 6, 2007 and April 27, 2007

The applicant also submitted copies of documentation that is already part of the record.

The "Cedula" and a copy of the applicant's passport establish the applicant's nationality. Therefore, the director's decision to deny the application on this ground is withdrawn.

The money order receipts indicate the applicant was present in the United States prior to and subsequent to the qualifying dates to establish continuous residence and continuous physical presence. The initial TPS application was received on April 3, 2001 and the record contains an employment authorization card for the period from

June 22, 2001 to September 9, 2002. The California Identification Card indicates a date of June 27, 2002. However, the applicant has failed to provide any evidence indicating his presence in the United States in February and March 2001. Therefore, the applicant has not submitted sufficient evidence to establish continuous residence since February 13, 2001 and continuous physical presence in the United States from March 9, 2001 to April 3, 2001, the filing date of the TPS application.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will 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.