

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



M

FILE: [REDACTED]  
[EAC 03 074 53088]

Office: Vermont Service Center

Date: JUN 27 2007

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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied, reopened, and denied again by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a 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. In addition, the director denied the application because the applicant failed to establish that he is a national of El Salvador.

On appeal, the applicant asserts his eligibility for TPS and submits evidence in support of his claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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.

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. 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 until September 9, 2006, upon the applicant's re-registration during the requisite time period. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on November 12, 2002.

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).

On April 25, 2003, the director requested the applicant to submit evidence to establish his eligibility for TPS late registration. The applicant was also requested to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States. The director determined that the record did not contain a response from the applicant, and therefore, denied the application on August 12, 2003. The applicant filed an appeal which was received by the VSC on August 25, 2003, after the prescribed 33 days. The director treated the appeal as a motion to reopen, pursuant to 8 C.F.R. § 103.3(a)(1)(v)(B)(2). On August 5, 2004, the director denied the application due to abandonment because the applicant failed to appear for his scheduled fingerprint appointment.

On August 13, 2004, the applicant filed a motion to reopen. The director granted the motion to reopen and on September 20, 2004, requested the applicant to submit evidence to establish his eligibility for TPS late registration. The applicant was also requested to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States. The applicant was also requested to submit evidence to establish that he is a citizen or national of El Salvador. In response, the applicant submitted copies of his Guatemalan birth certificate along with an English translation; copies of a registration certificate and passport of his father, [REDACTED]; and copies of three applications for auto insurance dated July 28, 1999, July 28, 2000, and July 28, 2002. The applicant also stated that his father was born in El Salvador and later became a resident in Guatemala. The applicant also states that he was born in Guatemala and he is automatically a resident of both Guatemala and El Salvador.

The director denied the application again on January 20, 2005, 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. In addition, the director denied the application because the applicant failed to establish that he is a national of El Salvador.

On appeal, the applicant states that his father, [REDACTED], originally from El Salvador became a resident of Guatemala. The applicant also states that he has proved that he has been in the United States before the initial period for El Salvadoran TPS began. The applicant also provides the following documentation in support of his claim of eligibility for TPS: a copy of a letter dated January 25, 2005, from [REDACTED] of All Time Service, Inc, who stated that the applicant had worked for her company since 2002; and copies of the same documentation submitted in response to the director's September 20, 2004 request.

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record 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 he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above. A review of the record of proceedings reflects that 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 decision to deny the application for TPS 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, to the date of filing his application.

On appeal, the applicant submits a copy of a letter a copy of a letter dated January 25, 2005, from [REDACTED] of All Time Service, Inc, who stated that the applicant had worked her company since 2002, which post-dates the requisite time periods for continuous residence and continuous physical presence. In addition, the copies of the three applications for auto insurance dated July 28, 1999, July 28, 2000, and July 28, 2002, reflect a gap of one year from July 28, 2001 and July 28, 2002. The sufficiency of all evidence will be judged

according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous physical presence requirements 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 third issue of this proceeding is whether the applicant eligibility for TPS based on his claim that he is a national or citizen of El Salvador.

On appeal, the applicant claims that he has proven that he is citizen of El Salvador, and he claims he automatically became a resident of El Salvador because his father is an El Salvadoran national. The applicant also provides copies of an English translation of his Guatemalan birth certificate, a copy of a "Papel Legal" in Spanish, and a copy of a "Ministerio De Gogernacion" in Spanish.

A review of the record of proceedings reflects that the applicant has not provided any evidence to establish that he is a national or citizen of El Salvador. It is noted that the applicant has provided a copy of the biographical pages of his Guatemalan passport. Therefore, the director's decision to deny the application based on this ground 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 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.