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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

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[REDACTED]

FILE:

[REDACTED]

[EAC 05 225 73948]

Office: VERMONT SERVICE CENTER

Date: NOV 05 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:

[REDACTED]

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 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 claims 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 director denied the application 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 residence and 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 El 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 March 11, 2005.

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 April 26, 2006, 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 residence and physical presence in the United States. Although the director determined that the applicant failed to respond to the request, the record of proceedings shows that the applicant replied to the request

on May 23, 2006. The applicant provided copies of his employment authorization cards dated March 6, 1998 to March 5, 1999; June 21, 2000 to June of 2001; and June 21, 2001 to June 20, 2003.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on September 29, 2006.

On appeal, counsel states that the applicant was a dependent on his mother's asylum application until he reached the age of 21, which was on March 18, 2003. Counsel also states that the applicant submitted a TPS application in July of 2003, which was initially rejected by the service center. Counsel further states that the TPS application was resubmitted, and the applicant did not receive any further response from the service center.

The record of proceedings shows that applicant's date of birth is March 18, 1982. The record also shows that the applicant received a rejection notice from the Vermont Service Center dated July 16, 2003, in which it was stated that the applicant's Form I-765, Application for Employment Authorization was being returned to him because he had not filed a completed Form I-821, Application for Temporary Protective Status. There is no evidence contained in the record to show that the applicant filed a TPS application during 2003.

The record shows that the applicant was over the age of 21 when he filed his current TPS application; and therefore, could not be considered a child of an alien currently eligible to be a TPS registrant. The record further shows that the applicant's mother's asylum application was terminated on September 3, 2003. The applicant was no longer considered a child of an asylum applicant as of March 18, 2003, when he reached the age of 21. The applicant has not submitted any evidence to establish that he has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). 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.

As stated above, the applicant was requested on April 21, 2006, to submit evidence establishing his qualifying residence and physical presence in the United States. The applicant, in response, provided the following documentation:

1. Copies of the applicant's INS Employment Authorization cards dated March 6, 1998 to March 5, 1999; June 21, 2000 to June of 2001; and June 21, 2001 to June 20, 2003;
2. A copy of a Urgente Express money receipt dated January 15, 2001;
3. A copy of the applicant's bank statement from [REDACTED] dated August 14, 2002; and,
4. A copy of an INS receipt notice addressed to the applicant and dated July 3, 2001;

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on September 29, 2006.

On appeal, the applicant reasserts his claim and submits the following documentation:

5. Copies of the applicant's 2004 IRS Form W-2, Wage and Tax Statements; and,
6. A copy of the applicant's pay stub from LYN-ROG, Inc. and dated April and May of 2004.

The applicant resubmitted copies of his employment authorization cards, bank statement, money order receipt, and INS receipt notice.

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 evidence submitted is sporadically dated and is insufficient to establish the continuity of the applicant's presence in the United States as required.

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.

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.