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[REDACTED]

FILE: [REDACTED]
[EAC 07 003 79376]

Office: VERMONT SERVICE CENTER

Date: **SEP 17 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.

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, 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 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 submit a copy of an identity document. The director, therefore, denied the application.

On appeal, the applicant states that he applied for TPS in 2001 and has lived continuously in the United States since March 25, 1999.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period on April 3, 2001. That application was denied as abandoned on November 7, 2002, for failure to appear for fingerprinting. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe. The applicant filed another TPS application on December 16, 2002. That application was denied on July 14, 2003 because the applicant failed to establish his eligibility for TPS. On May 4, 2005, the applicant filed a TPS re-registration application. That application was denied on August 16, 2005 because the applicant had not been granted TPS and he was therefore ineligible for re-registration. The applicant filed an untimely appeal which was rejected by the Director, California Service Center, on October 27, 2005.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on October 3, 2006. The director denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish his eligibility for filing under the provisions of late registration. The director also determined that the applicant failed to establish his identity and nationality and his continuous residence and continuous physical presence. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because he had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on April 3, 2001. That initial application was denied by the director on November 7, 2002. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed the present Form I-821 on October 3, 2006. Since the initial application was denied on November 7, 2002, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late 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 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.

- (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 October 3, 2006.

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 March 21, 2007, the director determined that the applicant failed to establish his eligibility for late registration, failed to establish continuous residence and continuous physical presence, and failed to establish his identity and nationality. Therefore, the director denied the application.

On appeal, the applicant states that he is a national from El Salvador who first entered the United States on March 25, 1999, and has lived here continuously since then. 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 remaining issues in this proceeding are whether the applicant has established his nationality and identity, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

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. Copies of an El Salvadoran passport and birth certificate.
2. A letter from the Internal Revenue Service (IRS) dated August 16, 1999, a 1999 Form 1099-MISC, Miscellaneous Income Tax Statement, 2006 tax documents.
3. Copies of an ALFA Hispanic Center identification card issued on July 31, 2000, and a State of Georgia identification card issued on February 26, 2002.
4. Copies of money transfer receipts dated December 18, 2001, February 5, 2002, January 26, 2003, an undated money transfer receipt, and a copy of a money order receipt dated April 30, 2005.
5. Copies of Sprint Bills dated October 8, 2004 and May 9, 2005, a Comcast service statement dated November 21, 2005, and a Comcast bill dated August 26, 2006.
6. Copies of a Delta Airlines ticket stub dated February 13, 2005, a Bank of America statement for a period from April 14, 2005 through July 12, 2005, and a letter from Royal Prestige dated November 3, 2006.

The passport and birth certificate establish the applicant's nationality and identity. Therefore, this basis for the director's decision to deny the TPS application will be withdrawn. The August 16, 1999 IRS letter and 1999 Form 1099-MISC, Miscellaneous Income Tax Statement indicates the applicant was present in the United States in 1999. Similarly, the ALFA identification card indicates the applicant was present in the United States on July 31, 2000. However, these documents cannot, by themselves, establish the applicant's continuous residence from February 3, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. One of the other money transfer receipts indicates a date of February 5, 2002, 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.