

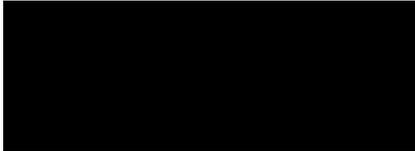
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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy**



MI

FILE:

[REDACTED]  
[EAC 03 258 53544]

Office: VERMONT SERVICE CENTER

Date: **OCT 03 2005**

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.

Robert P. Wiemann, Director  
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.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, Ms. [REDACTED] and Bethel Holy Church are not authorized under the regulations at 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, he shall be considered as self-represented and the decision shall only be furnished to him.

The director denied the application because the applicant failed to establish he had continuously resided in the United States since February 13, 2001 and had been continuously physically present in the United States since March 9, 2001. The director also found the applicant had failed to establish he was eligible for late registration.

On appeal, the applicant outlines the evidence that he has submitted to establish continuous residence and continuous physical presence in the United States. The applicant states that he is eligible for the benefit sought.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reflects that the applicant filed his initial application with Citizenship and Immigration Services (CIS), on September 15, 2003.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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).

On initial submission, the applicant forwarded:

1. A copy of his El Salvadorian passport containing a nonimmigrant H-2B visa issued to him on March 9, 2001 at the American Embassy in San Salvador. His passport shows that he used that visa to enter the United States on March 28, 2001 at Houston, Texas.
2. A copy of his IRS Form 1040EZ, U.S. Individual Income Tax Return, for 2002.
3. A copy of his State of New Jersey Income Tax – Resident Return Homestead Rebate Application for the tax year from January through December 2002.
4. A copy of an undated letter from [REDACTED] president of Borst Landscape & Design in Allendale, New Jersey indicating that the applicant was legally in the United States.
5. A copy of a letter to the applicant dated December 20, 2002 from [REDACTED] business manager of [REDACTED] in Allendale, New Jersey providing him verification that he was legally authorized to work for the firm at that time.

On April 27, 2004, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit additional evidence establishing his continuous residence in this country prior to and since February 13, 2001 and his continuous physical presence from March 9, 2001, to the date of filing. The applicant did not respond to the director's request.

The director determined that the applicant had failed to establish he was eligible for TPS and denied the application on July 15, 2004. On appeal, the applicant submitted the following additional documentation:

6. A copy of his IRS Form W-2, Wage and Tax Statement, for 2001 from [REDACTED]
7. A copy of his IRS Form 1040EZ, U.S. Individual Income Tax Return, for 2001.
8. A copy of his State of New Jersey Income Tax – Resident Return Homestead Rebate Application for the tax year from January through December 2001.
9. A copy of his IRS Form W-2, Wage and Tax Statement, for 2002 from [REDACTED]

It is noted that on his TPS application, the applicant indicates that he entered the United States as an H-2B nonimmigrant and a temporary worker in February 2001. His passport shows that he was last admitted in that status at Newark, New Jersey on April 13, 2002 and permitted to remain in the United States in that classification until December 31, 2003. The record contains documentary evidence to show that the applicant was in a valid nonimmigrant status when he filed his TPS application on September 13, 2003, and was eligible for the late initial registration provisions of TPS. Therefore the applicant has met the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the applicant has overcome this ground for denial.

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 Secretary of the Department of Homeland Security has granted an extension of the TPS designation with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The applicant indicates on his Form I-821, Application for Temporary Protected Status, that he entered the United States on "02/2001." However, the passport that the applicant forwarded for the record clearly shows that he was in El Salvador on March 9, 2001 when the H-2B visa was issued. The record reflects that he entered the United

States on March 28, 2001 as a nonimmigrant temporary worker under the H-2B classification. None of the evidence outlined above establishes that the applicant was in the United States prior to March 28, 2001. It is determined that the applicant has not submitted sufficient evidence to establish his continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to March 28, 2001. Therefore, he cannot establish continuous residence in the United States since February 13, 2001, or continuous physical presence in the United States since March 9, 2001. The provisions of 8 C.F.R. § 244.2(b) and (c) have not been met and he application is denied for these reasons. Consequently, the director's decision to deny the application for TPS is 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.