

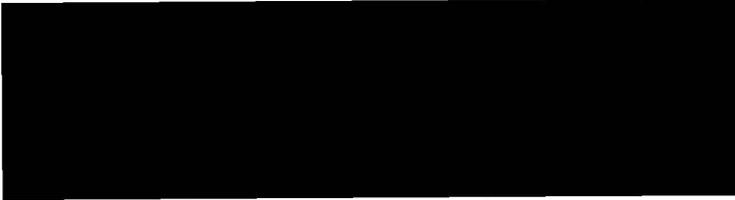


U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy**

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FILE:



[WAC 05 209 72035]

OFFICE: California Service Center

DATE:

MAY 14 2007

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a citizen of El Salvador who is applying for 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 on the ground that the applicant had previously filed an application for TPS which was denied for failure to establish prima facie eligibility, thereby making the applicant ineligible for re-registration under section 244 of the Act.

On appeal counsel asserts that the applicant submitted proof of his eligibility for late registration, as well as his continuous residence and continuous physical presence in the United States from the dates applicable to El Salvadoran nationals, with his current TPS application. Copies of those materials are resubmitted on appeal.

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 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.

El Salvador nationals applying for TPS must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, 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. *See* 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. *See* 8 C.F.R. § 244.9(b).

The applicant, who claims to have entered the United States without inspection on June 1, 1999, filed his initial Form I-821, Application for Temporary Protected Status [EAC 02 158 51053], on March 20, 2002. After the applicant failed to respond to a request for evidence issued on December 10, 2002, the director denied the application on July 21, 2003, on the ground of abandonment, citing the regulation at 8 C.F.R. § 103.2(b)(13). The applicant was advised that a denial due to abandonment could not be appealed, but that he could file a motion to reopen under certain conditions. No such motion was filed by the applicant.

The applicant filed his current TPS application on February 25, 2005. The director denied the application on August 1, 2006, noting that the previous TPS application had been denied for failure of the applicant to establish "prima facie eligibility," thereby making the applicant "ineligible for re-registration under section 244 of the Act."

On appeal counsel asserts that the applicant is eligible for late TPS registration as the minor child (at the time of filing) of his mother, [REDACTED], a TPS registrant. Citizenship and Immigration Services (CIS) records confirm that the applicant's mother filed a TPS application during the initial registration period for El Salvadoran nationals and was approved for TPS. As evidence of his identity and nationality, the applicant has submitted photocopies of his El Salvadoran passport with a photo identification, issued in March 2002, and his birth certificate with a certified English translation. On the basis of the foregoing documentation, the AAO determines that the applicant has established that he is a national of a state designated for TPS, in accordance with 8 C.F.R. § 244.2(a), and that he is eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv).

As evidence of his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, as required under 8 C.F.R. § 244.2(b) and (c), the applicant has submitted photocopies of the following documentation with his current TPS application (resubmitted on appeal): two Spanish-language courier envelopes addressed to the applicant in Flushing, New York, one stamped December 17, 2000, and the other stamped May 3, 2001; two money transfer invoices from the applicant in Flushing, New York, to a recipient in El Salvador, dated January 18, 2001, and July 18, 2001; a pharmacy invoice to the applicant from a pharmacy in Jackson Heights, New York, dated December 17, 2001; a letter addressed to the applicant in Flushing, New York, from the Social Security Administration, dated July 10, 2002, acknowledging the receipt of his application for a Social Security card; the applicant's Form W-2, Wage and Tax Statement, for the year 2002; two Employment Authorization Cards issued to the applicant with validity periods of May 8, 2002 to September 9, 2002, and March 10, 2003 to September 9, 2003; an ID card issued to the applicant by the [redacted] with an expiration date of June 26, 2003; a letter addressed to the applicant in Flushing, New York, from a law firm in Bayside, New York, dated September 30, 2003, about a legal case; a bank statement addressed to the applicant in Flushing, New York, for May 2004; and a bill addressed to the applicant in Flushing, New York, dated June 10, 2004, for cable services.

The applicant has not submitted any original documents, which would be the best evidence of their authenticity. Furthermore, the only documents that identify the applicant's address in New York prior to the letter from the Social Security Administration on July 10, 2002, are the two Spanish-language courier envelopes stamped December 17, 2000, and May 3, 2001. The applicant's failure to submit the originals makes it particularly difficult to ascertain the authenticity of these envelopes.

The only other evidence of the applicant's residence and physical presence in the United States prior to May 2002 is an affidavit (once again in photocopy) from the applicant's mother, dated January 31, 2005, in which she states that the applicant entered the United States on June 1, 1999, and has lived with her continuously up to the present time. Letters from acquaintances are not, by themselves, persuasive evidence of residence or physical presence in the United States. Moreover, the mother's affidavit in 2005 conflicts with the information she provided in her initial TPS application, filed May 11, 2001, in which she identified the applicant as one of her children and indicated that he resided at that time in El Salvador.

It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). The applicant has provided no explanation for the inconsistent statements in his mother's TPS application in May 2001 and her affidavit in January 2005 with regard to the applicant's date of entry into the United States and where he was living as of May 2001. Moreover, doubt cast on any aspect of the petitioner's evidence reflects on the reliability of the petitioner's remaining evidence. *See id.*

Based on the foregoing analysis, the AAO determines that the applicant has failed to establish that he has been continuously physically present in the United States since March 9, 2001, and has continuously resided in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's decision to deny the application will be affirmed on those grounds.

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 that burden.

**ORDER:** The appeal is dismissed.