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U.S. Citizenship
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FILE: [REDACTED] Office: Vermont Service Center Date: **NOV 13 2007**
[incorporating [REDACTED]
[EAC 07 131 70214]

IN RE: Applicant: [REDACTED]

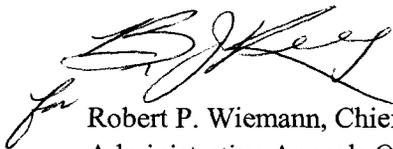
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254.

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 Vermont Service Center. Any further inquiry must be made to that office.


for 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 (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 record reveals that the applicant filed a late initial TPS application on February 1, 2007, under CIS receipt number EAC 07 131 70214. The director denied the application on May 16, 2007, because the applicant failed to establish his continuous residence in the United States from February 13, 2001, and his continuous physical presence from March 9, 2001, to the date of filing his TPS application.

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 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 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.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 reveals that the applicant filed his initial application with Citizenship and Immigration Services (CIS) on February 1, 2007.

To qualify for late registration, the 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 appeal, counsel states that the applicant is eligible for TPS as the applicant is a minor child and his father is a TPS registrant. Counsel also infers that the applicant should be granted TPS for humanitarian reasons so that the applicant may remain with his family in the United States. Counsel does not submit any additional evidence on appeal.

As noted by the director, at the time of filing his TPS application, the applicant was the minor child of a TPS registrant, and therefore, he is eligible for late registration for TPS. However, while the regulations may allow

children of aliens who are TPS eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements of eligibility for TPS.

Counsel also asserts, on appeal, that the applicant has met the requisite established continuous residence and continuous physical presence through his father who qualifies in his place, and that the requisite continuous residence and continuous physical presence is imputed to the applicant through his father, a TPS registrant. However, pursuant to Section 244 (c) of the Act, and the related regulations in 8 C.F.R. 8 C.F.R. § 244.2, an alien who is a national of a designated state is eligible for temporary protected status only if such alien establishes that he or she has met the continuous residence and physical presence criteria for TPS.

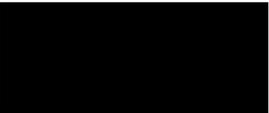
While regulations at 8 C.F.R. § 244.2(f)(2)(iv) allow children of aliens who are TPS-eligible to file applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. According to 8 C.F.R. § 244.2, an alien may in the discretion of the director be granted TPS if the alien establishes that he or she meets all the requirements listed in subparagraphs (a), (b), (c), (d), (e) and subparagraph (f)(1), or (f)(2).

Counsel cited case law permitting imputation of a parent's "domicile" and "residence" to the unemancipated minor child. The applicant, in this case, is applying for Temporary Protected Status under section 244 of the Act. The case law cited by counsel relates to aliens who are lawful permanent residents, seeking asylum, under removal proceeding, suspension of deportation or cancellation of removal, and does not relate to the applicant's case. As stipulated in section 244(c), above, the Attorney General designated the dates required to establish continuous residence and continuous physical presence as February 13, 2001, and March 9, 2001, respectively. The applicant, in this case, was not present in the United States during the requisite period required to establish continuous residence and continuous physical presence. The Administrative Appeals Office is bound by the clear language of the statute and lacks the authority to change the statute. Further, the statute did not provide for a waiver of continuous residence and continuous physical presence requirements.

The director determined that the applicant had not submitted sufficient evidence to establish his continuous residence and his continuous physical presence in the United States during the requisite period. The applicant stated on his Form I-821, Application for Temporary Protected Status, that he entered the United States on November 5, 2005. Also, the record reveals that the applicant was apprehended on entry on November 5, 2005, and placed in proceedings. Therefore, the applicant cannot establish continuous residence since February 13, 2001, and continuous physical presence in the United States from March 9, 2001 to February 1, 2007, the date of filing his TPS application. There is no waiver of these requirements, even for humanitarian reasons.

As concluded by the director in his decision, every TPS applicant must fulfill all the requirements in order to gain TPS status; status cannot be acquired through any other person. The applicant has, therefore, failed to establish that he has met the residence and physical presence requirements described in 8 C.F.R. § 244.9(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his nationality and identity. The applicant has not furnished a copy of a birth certificate and English translation.



In addition, he has not submitted a national identity document from his country bearing a photograph and or/fingerprint. Therefore, the application must also be denied for these reasons.

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.