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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

M,

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FILE: [REDACTED]  
[EAC 06 343 75986]

Office: VERMONT SERVICE CENTER

Date: **AUG 13 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the 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 Director, Vermont Service Center (VSC), denied the application. The application is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who seeks 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 he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States. Finally, the director found that the applicant had failed to establish his qualifying nationality and identity.

On appeal, the applicant submits copies of documents relating to his asylum application. The applicant also submits photocopies of the identity page of his Salvadoran passport and of his birth certificate.

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 term *continuously physically present*, as used 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 term *continuously resided*, as used 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 for El Salvador until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest extension granted 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 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 initial registration period for 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 September 8, 2006. 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. The applicant must also file 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. 8 C.F.R. § 244.2(g).

The record reflects that the applicant filed an initial TPS application on September 8, 2006 - almost four years after the close of the initial registration period for Salvadorans on September 9, 2002. The director accepted the application under the late filing provision in 8 C.F.R. § 244.2(f)(2). In support of his application, the applicant submitted photocopies of his passport, his birth certificate, a Form I-862, Notice to Appear, dated January 17, 2001, a Referral Notice from the Newark Asylum Office, dated January 17, 2001, and, a Form I-881, Application for Suspension of Deportation under NACARA.

On January 5, 2007, the director requested that the applicant provide further evidence to establish eligibility for late registration and to establish his qualifying continuous residence and continuous physical presence. The director also requested that the applicant submit a photocopy of his national identity document. In response, the applicant submitted a notarized letter from [REDACTED] attesting to the fact that the applicant worked for him in December 2000 and from January 2001 to April 2001. The applicant also submitted a photocopy of the biographical page of his passport.

On March 26, 2007, the director denied the application, determining that the applicant failed to establish eligibility for late registration, failed to establish his qualifying continuous residence and continuous physical presence, and failed to establish his identity and nationality.

On appeal, the applicant asserts that his asylum application was pending during the initial registration period. The applicant submits copies of documentation relating to his asylum application and removal proceedings.

The record reveals that the applicant filed a Form I-589, Application for Asylum and Withholding of Removal, on January 31, 1996. The Asylum Office was unable to grant the applicant asylum, and, on January 17, 2001, issued a Notice to Appear and referred the applicant's asylum application to the Immigration Judge (IJ). The record further reflects that the applicant appeared for a Master Calendar hearing before the IJ on May 10, 2001, and that the IJ administratively closed the applicant's removal proceedings to allow the applicant the opportunity to apply for TPS. The applicant waited over five years before finally applying for TPS on September 8, 2006.

The regulations governing late registration expressly state that in order to be eligible for late registration, the applicant must have an application that is "pending or subject to further review or appeal." 8 C.F.R. § 244.2(f)(2)(ii). While the IJ's order does not indicate that the applicant's asylum application was denied or withdrawn, the order clearly states that the applicant's removal proceedings and the adjudication of his asylum application were "Administratively Closed" to allow him to apply for TPS. Administrative Closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. See *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996). Therefore, this portion of the director's decision will be withdrawn.

The next issues in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001.

The evidence submitted by the applicant fails to establish his qualifying residence and continuous physical presence. The documentation relating to the applicant's asylum application only shows residence and physical presence through May 10, 2001. The letter from [REDACTED] can be given little evidentiary weight and is of little probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). The letter is not in affidavit form. The letter is vague and only generally states that the applicant worked for the employer. In addition, the letter is not substantiated by employment records such as pay stubs or W-2 Forms. The applicant has not submitted sufficient credible evidence to establish the continuous residence and continuous physical presence requirements of 8 C.F.R. § 244.2(b) and (c). The director's decision to deny the application for TPS on these grounds will be affirmed.

The final issue in this proceeding is whether the applicant is a citizen of El Salvador. The photocopy of the applicant's Salvadoran passport is sufficient to establish his qualifying citizenship. 8 C.F.R. § 244.2(a). Therefore, the applicant has overcome this portion of the director's decision and this portion will be withdrawn;

nevertheless, as discussed in detail above, the remaining grounds for the director's decision to deny the application are affirmed and the appeal will be dismissed.

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.