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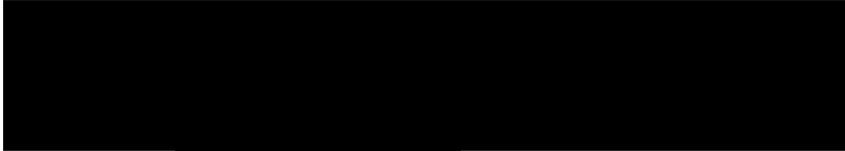
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: California Service Center DATE: FEB 21 2008
[WAC 02 193 53597]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied, re-opened and denied again by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 director denied the application because the applicant failed to establish he had been continuously resident and continuously physically present during the required periods.

On appeal, the applicant claims that he is not required to meet the residency and physical presence requirements of TPS.

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.

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 May 22, 2002. The applicant's initial application was denied, then re-opened and denied again, by the director because the applicant has not resided in the United States during the required period. The applicant's initial application was filed during the initial registration period, however the applicant was not eligible because he did not enter the United States until February 10, 2002. Subsequent applications were filed and the applicant asserted that he was the child of an alien currently eligible for TPS and qualified for a late initial registration.

A person 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 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 May 29, 2007, the applicant was requested to submit evidence establishing his qualifying residence as set forth in 8 C.F.R. § 244.2(c). The applicant, in response, asserted that as the child of an alien currently eligible for TPS he is not required to establish the residence and physical presence requirements of TPS.

The director determined that the applicant had failed to establish he met the residency requirements and denied the application on August 11, 2007. On appeal, the applicant again asserts that he is not required to meet the residency requirements of TPS.

It has been explained to the applicant on numerous occasions that someone who qualifies to file a late registration application is not entitled to TPS on that basis alone. The late registration provisions under 8 C.F.R. § 244.2(f)(2) are a subsection of 8 C.F.R. § 244.2. As noted by the emphasis provided in the pertinent regulations above, an application must satisfy the criteria listed at 8 C.F.R. § 244.2(a) – (e) **and** (f)(1) or (f)(2). While 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 for eligibility for TPS as detailed in 8 C.F.R. §§ 244.2(a) through (e). In this case, the applicant's first application was filed during the initial registration period but he failed to meet the continuous residence requirement.

By his own admission, the applicant arrived in the United States subsequent to the eligibility period. Therefore, he cannot satisfy the residence requirement described in 8 C.F.R. §§ 244.2(c) and is ineligible as a matter of law.

The applicant asserts that because he was issued an Employment Authorization Document (EAD) under the interim benefit regulation for TPS that he has been granted TPS. It is self-evident that an interim EAD does not constitute a granting of TPS, but merely a privilege to accommodate TPS applicants during the pendency of their application. The applicant has not been granted TPS and has not ever been granted TPS. While he may have filed his application during the initial registration period he was not eligible for TPS because he did not arrive until subsequent to the required periods for Salvadoran TPS.

Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.