

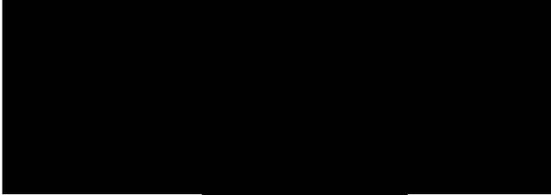
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u.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U. S. Citizenship
and Immigration
Services

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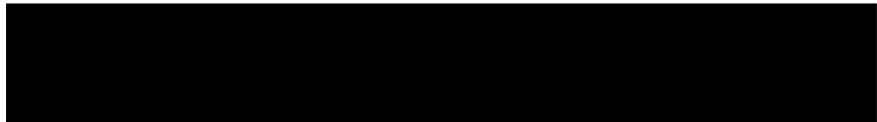


FILE: [REDACTED]
[EAC 06 357 83446]

Office: Vermont Service Center

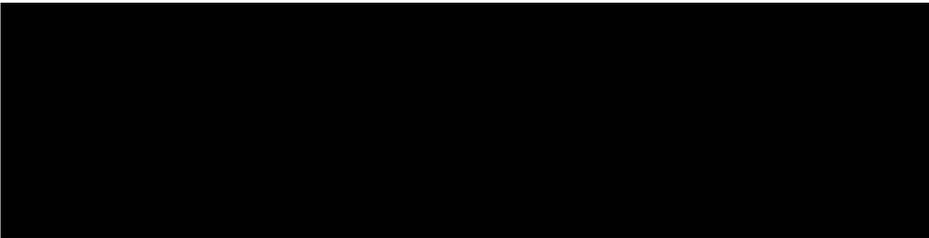
Date: MAR 0 32D08

INRE: Applicant:



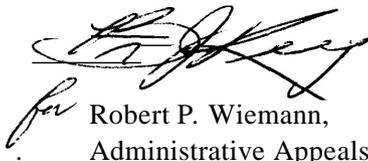
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center office. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Officer

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 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 August 29, 2006, under CIS receipt number EAC 06 357 83446. The director denied the application on July 16, 2007, because the applicant failed to submit evidence to establish his requisite continuous residence and continuous physical presence in the United States. The director noted that the applicant failed to submit sufficient evidence for the periods from January 2001 through February 2002, and from April 2002, to the date of filing his 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
- (t)
 - (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 (t)(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 EI 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 TPS application on August 29, 2006.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(t)(2).

The record reflects that the applicant had an asylum application pending since December 22, 1995 and which was denied on September 18, 2006. As noted by the director, the applicant is eligible for late initial registration.

On appeal, counsel reasserts that the applicant is eligible for TPS as a national of EI Salvador, and that the applicant has met the continuous residence and continuous physical presence requirements. With the appeal, the applicant submits additional documents, consisting of photocopies of the following:

- 1. His EI Salvador birth certificate [in Spanish] with an English translation;
- 2. A Washington, DC identification card, issued on October 14, 2006, with a paid receipt;

3. A photo identification card from CASA of Maryland, Inc., issued August 12, 2006;
4. A Texas Department of Health Certificate of Birth, for a child born on November 30, 2000;
5. A Social Security Earnings statement, dated July 30, 2007, reflecting earnings from 1997 through 2002, and no earnings in 2003 through 2005;
6. A District of Columbia Certificate of Live Birth, for a child born on April 8, 2007;
7. A receipt from Venus Stereos & TV, dated October 17, 2004;
8. An undated Internal Revenue Service notice pertaining to the 2003 tax year;
9. An invoice from Professional Service Fee, dated April 16, 2002;
10. A letter from the Texas Department of Health, dated August 26, 2002;
11. An invoice from Children's Medical Center of Dallas, Texas, dated February 23, 2002;
12. A paystub from Apple Staffing, Inc., issued for the period ending July 1, 2001;
13. Two earnings statements from United Thrift Management, Inc., reflecting pay dates of August 18, 2000, and December 8, 2000.
14. An Employment Authorization Document valid from January 6, 2000 to January 5, 2001;
15. U.S. Individual Income Tax Return, Forms 1040, for the years 2001, 2002 and 2006;
16. Two INS notices, dated in 1996;
17. An Employment Authorization Document, issued in January 1997;
18. His Social Security card;
19. A Texas Department of Public Safety Criminal History report, dated April 24, 2007.

The issue in this proceeding is whether the applicant has established the requisite continuous residence and continuous physical presence in the United States.

As noted by the director, the applicant failed to submit sufficient evidence to establish the requisite continuous residence and continuous physical presence, as there is no evidence for the periods from January 2001 through February 2002, and insufficient evidence for the period from April 2002 to the date of filing. It is also noted that the only evidence submitted for the year 2004 is a receipt issued on October 17, 2004, and there is no evidence for the year 2005. It is reasonable to expect that the applicant would have sufficient contemporaneous evidence to establish the requisite continuous residence and continuous physical presence requirement. A review of the record reveals that the applicant has not submitted sufficient evidence to establish that he satisfies the continuous residence and continuous physical presence requirements in the United States described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the director's decision to deny TPS for these reasons must be 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.