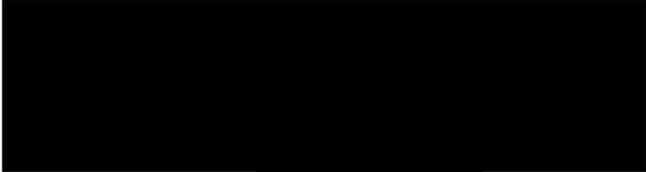


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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
[EAC 06 12652316]

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 10 2008**

INRE: 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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), denied the application. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 his qualifying continuous residence and continuous physical presence in the United States. The director also denied the application because the applicant failed to submit an identity document bearing his photograph and/or fingerprint.

On appeal, counsel for the applicant asserts that he has been continuously physically present in the United States during the requisite time periods and submits documents relating to his residence and physical presence and his identity.

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.

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 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.

The burden of proof is on 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 record reflects that the applicant filed an initial TPS application on March 23, 2006 - almost four years after the close of the initial registration period for Salvadorans. 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 the following documents: his birth certificate, with translation; a receipt notice for an Application for Asylum, dated February 27, 1991; printouts from the Internal Revenue Service (IRS), indicating that the applicant filed tax returns in 1992, 1993, 1994, 1995, and 2000; two pay stubs, dated April 26, 2000, and June 7, 2000; and, a Form 1-881, Application for Suspension of Deportation or under the Nicaraguan and Central American Relief Act (NACARA).

On May 12, 2006, the director requested that the applicant provide evidence that he was eligible for late initial registration. The director also requested that the applicant provide further evidence to establish his qualifying continuous residence and continuous physical presence. Finally, the director requested that the applicant submit a copy of a photo identity document. The applicant did not respond to the director's request.

On April 2, 2006, the director denied that application, determining that the applicant failed to establish his qualifying continuous residence and continuous physical presence and failed to establish his identity.

On appeal, counsel for the applicant asserts the applicant's eligibility for TPS and submits additional documentation.

The record of proceeding contains a Form 1-589, Request for Asylum in the United States, filed on February 27, 1991; Employment Authorization Documents (EAD's) relating to the pending Form 1-589, valid from April 30, 2000, to April 29, 2001, and from June 6, 2001, to June 5, 2002; an application for Suspension of Deportation (Form 1-881) filed on November 27, 2001; and, the biographic page of the applicant's Salvadoran passport.

The evidence submitted by the applicant establishes his qualifying residence and continuous physical presence. The EAD's relating to the applicant's pending Form 1-589 and the Form 1-881 show residence and physical presence immediately prior to and during the initial registration period. The other documentation in the record of proceeding shows continuous residence and continuous physical presence since the initial registration period through the present. The applicant has submitted sufficient credible evidence to establish the continuous residence and continuous physical presence requirements of 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's decision to deny the application for TPS on these grounds will be withdrawn.

Regarding the applicant's identity, the record contains a photocopy of the biographical page of the applicant's Salvadoran passport, issued in El Salvador, on March 9, 1990. The applicant also submits a photocopy of his California driver's license. These documents are sufficient to establish the applicant's identity and Salvadoran nationality. Therefore, the director's decision to deny the application on this ground is also withdrawn.

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 met this burden.

ORDER: The appeal is sustained.