

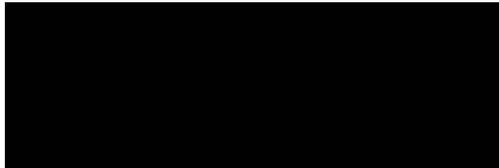
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



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

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FILE: [REDACTED]
[EAC 07 002 76013]

OFFICE: VERMONT SERVICE CENTER

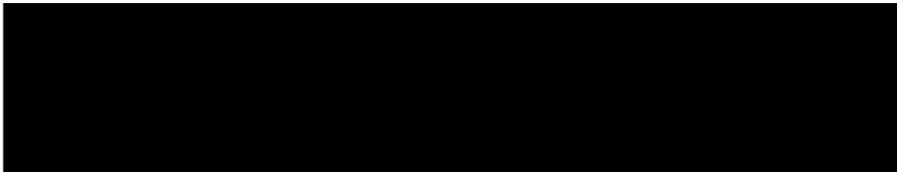
DATE: **MAR 11 2008**

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 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 by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native and 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 applicant's TPS because he found the applicant had not established a qualifying continuous residence and physical presence during the required periods.

On appeal, the applicant asserts he is eligible for late registration because of a pending asylum 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 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 phrase continuously physically present, as defined 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 phrase continuously resided, as defined 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 EI Salvadorans must demonstrate continuous residence in the United States since February 13,2001, and continuous physical presence in the United States since March 9,2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The first issue in this matter is whether the applicant is eligible for late registration.

On appeal counsel for the applicant asserts that he is eligible based on a pending asylum application. In support of this the applicant includes a referral notice dated November 3, 2006. The applicant's Asylum application was denied on January 9, 2006, because the applicant failed to appear for an interview and the application was deemed abandoned. The referral notice submitted on appeal is not the denial notice, but notice that the applicant's request for withholding from removal had been referred to an immigration judge, and that the applicant could re-open his asylum application when he appeared before the judge for removal proceedings. There is no evidence to indicate that the applicant appeared before the immigration judge or re-opened his asylum application. An applicant must file a late registration application within sixty days of the termination of a qualifying condition. In this case the applicant's asylum application was denied as of January 9, 2006. The applicant had until March 10, 2006, to file a late registration application. This application was received October 2, 2006, and thus the applicant was not eligible to file a late registration application.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *affd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997,1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

In this case the applicant has failed to establish that he is eligible for late registration and the application will be denied on that basis.

The next issue in this matter is whether the applicant has established a continuous residence and physical presence during the required periods.

The director issued a Notice of Intent to Deny on February 22, 2007, requesting additional evidence of his continuous residence and physical presence during the required period.

The director concluded the applicant had not established a qualifying continuous residence and physical presence and denied the application on March 22, 2007.

On appeal the applicant asserts he has established eligibility and submits additional documentation in support.

The record contains chronological correspondence associated with his asylum application, as well as pay stubs, tax information, bank statements, state identification, student attendance records, and court docket reports. However, the AAO would note that the evidence submitted by the applicant contains several different names, and it is unclear that all of the evidence pertains to the applicant. For example the California state identification cards submitted by the applicant references a [REDACTED] and **not** [REDACTED]

The only evidence submitted by the applicant which bears his name (as listed on his Form 1-821 [REDACTED]) are letters from the Assemblies of **G o d**, [REDACTED] and IRS letters from 2006 informing the applicant that he filed no returns in 2000 and 2001.

While 8 C.F.R. § 244.9(a)(2) specifically states that additional documents such as letters "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence is sufficient to establish the applicant's qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since 1990. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these letters; however, no such evidence has been provided.

In addition, it is clear from the court documents submitted that the applicant violated his probation and that his whereabouts were unknown to the court for several years. These facts shed doubt on the applicant's continuous residence and physical presence during the required period.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The director concluded that the applicant had only been convicted of one misdemeanor and was eligible for TPS.

The record reveals the following offense:

- (1) On August 22, 1995, the applicant was convicted of Inflicting a Corporal Injury on Spouse, in the Municipal Court of Criminal Justice, Los Angeles County, California. Case No. [REDACTED]

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 establish a qualifying continuous residence and physical presence during the required period, or that he is eligible for late registration and has not met this burden.

ORDER: The appeal is dismissed.