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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date:

MAR 13 2008

[EAC 07 089 50477 Appeal]  
[EAC 05 229 79633 Application]

INRE:

Applicant:



APPLICATION:

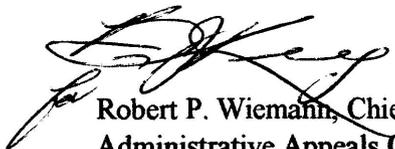
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center and is now before the Administrative Appeals Office on appeal. The appeal is sustained.

The applicant is 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, on May 17, 2005, under receipt number EAC 05 229 79633 which was denied by the TSC Director on January 8, 2007, because the applicant had failed to establish he was eligible for late initial registration and he had not met the continuous residence and continuous physical presence requirements for TPS. The director also found the applicant had not submitted documentation to verify his correct date of birth as there was a discrepancy between the passport he submitted and Service records.

On appeal, counsel states:

The service erred in denying TPS application. Applicant can demonstrate that he resided in the United States as of February 13, 2001 and has been continuously present from March 9, 2001 to the date of filing. The applicant can also provide documentation to verify the correct birth date.

On March 13, 2006, the director informed the applicant that Service records indicated that he was born on October 11, 1960, but his passport indicated that he was born on October 9, 1960. The director directed the applicant to submit evidence in the form of his birth certificate or a copy of both sides of his National Identification Card (NIC) to establish his true date of birth. The record reflects that a copy of the applicant's NIC was already in his file and that it verifies that he was born on October 9, 1960. Consequently, the director should not have denied the application for this reason.

Section 244(c) of the Act, and the related regulations at 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 in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his application with Citizenship and Immigration Services on May 17, 2005.

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.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(t)(2) above.

The record reflects that the applicant filed a Form **I-589**, Request for Asylum in the United States, on February **7, 1994**, and that application was pending on May 17, 2005, the day he filed his Form 1-821. Therefore, the applicant met the of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2)(ii). Therefore, the director should not have denied TPS for **this** reason.

As stated **above**, the applicant filed a Form 1-589 on February 7, 1994. On the basis of that application, he applied for and was issued ten Forms 1-766, Employment Authorization Card(s), beginning on April 20, **1994**, with the last card expiring on June 20, 2005.

The record contains the following documentation concerning continuous residence and continuous physical presence during the required periods from February 13,2001 until June 20,2005:

1. A World Vision mailing sent to the applicant in Mahopac, New York postmarked December 27,2000.
2. Checks written by the applicant on his Mahopac, New York, checking account on July 3, 2001, July 6, 2001, July 21, 2001, October **16**, 2001, January 4, **2002**, January 22, 2002, January 26,2002, February 2,2002, March 23,2002, March 29,2002, and March 30,2002.
3. A money order issued in Carmel, New York, dated July 16, 2001, showing the applicant paid Nextel Communications \$502.35.
4. A copy of the applicant's New York State insurance identification card for his vehicle effective October 31,2001 and expiring November 6,2001.
5. A copy of an invoice to the applicant dated October 19, 2002 showing he purchased a piece of equipment from Whispering Pine Landscape Supply, Corp. in Mahopac, New York, for \$293.51.
6. A copy of the applicant's hospital bill dated August 13,2003, from Putnam Hospital Center in "White" Plains, New York.
7. A copy of a Western Union money transfer dated November 15, 2004, showing the applicant sent funds to a person in El Salvador.
8. A copy of the applicant's bill from Nextel dated January **10**, 2005. The applicant's IRS Forms 1099-MISC, Miscellaneous Income, from Roto-Rooter Services Co. in Cincinnati, Ohio, for the years 2002, 2003 and 2004.
9. The applicant's IRS Forms W-2, Wage and Tax Statement, from RR Plumbing, Inc. in Cincinnati, Ohio, for the years 2003 and 2004.
10. The applicant's IRS Forms 1040, U.S. Individual Income Tax Return, for the years 2002, 2003 and 2004 prepared on March 29,2005.

After review of the record, it is determined the applicant has submitted sufficient evidence to establish that he has met the continuous residence and continuous physical presence requirements described in the regulations at 8 C.F.R. §§ 244.2(b) and (c). Therefore, the director's decision will be withdrawn and the application will be approved.

An alien **applying** for temporary protected status has the burden of proving that he or she meets the above requirements and is eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The appeal is sustained and the application is approved.