

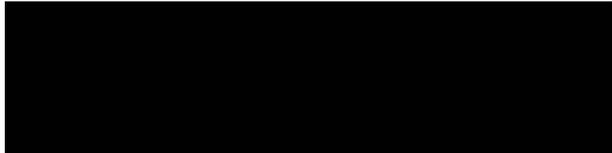
**PUBLIC COPY**



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

identifying data deleted to  
prevent any unwarranted  
invasion of personal privacy

M1



FILE: [REDACTED]  
[EAC 06 301 80698]

OFFICE: VERMONT SERVICE CENTER

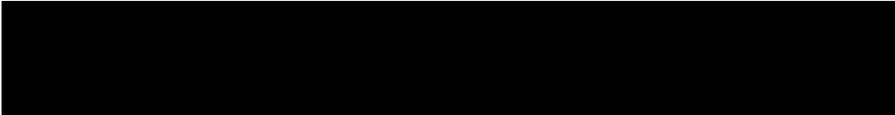
DATE:

**MAR 21 2008**

INRE: 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:



**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.

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 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 had not previously resided in El Salvador.

On appeal, counsel asserts that the decision is in error in that it is premised on the contention that in order for an applicant to be eligible for TPS under the El Salvadoran designation, the applicant must have last habitually resided in El Salvador.

Pursuant to section 244(c) of the Act, an alien who is a national of a foreign state designated under subsection (b) of this section (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c) of this section, may be granted temporary protected status in the United States. Section 101(a)(21) of the Act defines the term "national" to mean a person owing permanent allegiance to a state.

The regulation 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....

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 El Salvadorans was March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with Citizenship and Immigration Services (CIS) on July 21, 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).

The record reflects that the applicant was born in Mexico on January 5, 1987, to an El Salvadoran father and Mexican mother. Accordingly, the applicant is an El Salvadoran based on his father's citizenship. On his

TPS application, the applicant indicated he was a dual national of El Salvador and Mexico, and entered the United States in November 1995.

The director, in denying the application, determined that because the applicant never resided in El Salvador, he was ineligible for TPS.

On appeal, counsel argues that there is no regulation or statute that requires the applicant to have resided in El Salvador in order to be eligible for the benefit being sought.

While this may be true, the General Counsel, in GENCO Op. 92-34 (August 7, 1992), concluded that the Service may, in the exercise of discretion, deny TPS in the case of an alien who, although a national of a foreign state designated for TPS, is also a national of another foreign state that has not been designated for TPS. This conclusion was based on the limited purpose and temporary nature of TPS. The limited purpose of TPS is clear from the text of the statute itself. *See Mallard v. United States Dist. Ct. for South. Dist. of Iowa*, 109 S.Ct. 1814, 1818 (1989); *INS v. Phinpathya*, 464 U.S. 183, 189 (1984); *Richards v. United States*, 369 U.S. 1, 9 (1962).

The General Counsel explained that "TPS is not a provision designed to create a general right to remain in the United States. Rather, the statute provides a regularized means of granting haven to aliens who, because of extraordinary and temporary circumstances, cannot return to their home country in safety. *See id.* 244A(b)(1)(A), (B), and (C), 8 U.S.C. 1254a(b)(1)(A), (B), and (C)."

In this case, the circumstance which prompted the Attorney General to designate El Salvador for TPS does not prevent the alien from returning in safety to his previous home in Mexico. Consequently, the director's decision to deny the application for TPS 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.