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U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: **NOV 28 2008**

[EAC 08 215 51204, *appeal*]

[EAC 08 037 75538]

IN RE:

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: SELF-REPRESENTED

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of El Salvador who is applying for 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, under receipt number WAC 03 260 53906 after the initial registration period had closed. The Director, California Service Center (CSC), denied that application on August 16, 2005, after determining that the applicant had failed to establish he was eligible for late initial registration. A subsequent appeal was dismissed by the Director, (now Chief) of the AAO, on February 9, 2005, who determined that in addition to the applicant being ineligible for late initial registration, he had also failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001. The applicant filed a subsequent Form I-821 under receipt number WAC 05 161 78336 and indicated he was re-registering for TPS. The CSC Director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. A subsequent appeal was dismissed by the Chief, AAO, on July 25, 2006, who determined that because the applicant has not previously been granted TPS, he was not eligible to re-register for TPS and that the applicant had not established that he was eligible for late registration.

The VSC Director denied this Form I-821 because the applicant failed to establish he was eligible for late initial registration and he had not established that he had continuously resided in the United States since February 13, 2001 or that he had been continuously physically present in this country since March 9, 2001.

On appeal, the applicant states that he could not register during the initial registration period due to circumstances beyond his control. The applicant provides additional documentation in support of his claim.

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 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

- (f) (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 (f)(2) of this section.

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 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 first application with Citizenship and Immigration Services on September 9, 2003 and this application on November 6, 2007.

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(f)(2) above.

On appeal, the applicant acknowledges that he did not file his initial application during the initial registration period. He submits evidence in an attempt to establish his continuous residence and continuous physical presence

in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

On appeal, the applicant submits an affidavit in the form of a declaration from [REDACTED] who indicates that she first saw the applicant in the United States before the earthquake on February 13, 2001. The regulations do not provide that uncorroborated affidavits from friends or family members are sufficient to establish the applicant's continuous residence or continuous physical presence in the United States. He also submits a copy of a birth certificate for his son born on [REDACTED] in Oakland, California, along with copies of some of his federal tax documents for 2004, 2005 and 2006. This evidence does not establish that the applicant had continuously resided in the United States from February 13, 2001 and been continuously physically present since March 9, 2001. It is determined that the applicant has not provided convincing evidence to establish his continuous residence and continuous physical presence during the required time periods. 8 C.F.R. § 244.2 (b) and (c). Therefore, the VSC Director's decision is affirmed for these additional reasons.

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 temporary protected status has the burden of proving that he or she meets the requirements cited 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.