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U.S. Department of Homeland Security
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Washington, DC 20529-2090



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

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 05 2009
[WAC 05 249 50390, *appeal*]
[WAC 01 228 56359 as it relates to WAC 05 225 81348]

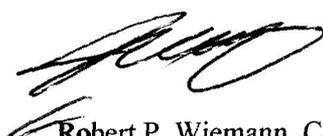
IN RE: Applicant: [REDACTED]
AKA [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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, California Service Center. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The case will be *sua sponte* reopened, and the appeal will again be dismissed.

The applicant is stated 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number WAC 01 228 56359 during the initial registration period. The director denied that application on July 15, 2003, because the applicant failed to establish that he had continuously resided in the United States since February 13, 2001, and failed to establish that he had been continuously physically present in the United States since March 9, 2001.

The applicant filed a subsequent Form I-821 on May 13, 2005, and indicated that he was re-registering for TPS.

The 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. The appeal from the director's decision was dismissed on May 5, 2007, after the Chief of the AAO also concluded that the applicant had failed to establish his eligibility for TPS.

On motion to reopen, counsel correctly states that some of the facts in the May 5, 2007 AAO order were in error. The AAO acknowledges that its statements in the May 5, 2007 decision indicating that the applicant had been added to a Form I-589, Request for Asylum in the United States, that he was arrested in Virginia on December 9, 1999 and charged with grand larceny and that his father is named [REDACTED] and not [REDACTED] were erroneous. In fairness to the applicant, the AAO has reopened the matter and is issuing this decision concerning the applicant's eligibility based upon the corrected record. It is noted that the applicant has been assigned [REDACTED] as his primary alien file number and his past applications and documentation are now contained in his new file.

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 application with Citizenship and Immigration Services on April 13, 2001.

A list of the evidence submitted by the applicant to show that he satisfying continuous residence and continuous requirements is shown below:

1. A copy of the applicant's COSTCO Wholesale gold star membership card issued to him in June 2000.
2. Copies of the applicant's pay statements from [REDACTED] in Ventura, California, for the periods ending June 22, 2000 and June 29, 2000.
2. A copy of the applicant's IRS Form 1040EZ, U.S. Income Tax Return for Single and Joint Filers With No Dependents for 2002, with attached IRS Form W-2, Wage and Tax Statements.
3. A copy of the applicant's California Income Tax Form 540, California Resident Income Tax Return for 2002.
4. The applicant's pay statements from [REDACTED] in Ventura, California, for the periods ending January 23, 2003 and April 3, 2003.
5. A copy of the applicant's Van Nuys Community Adult School in Van Nuys, California, identification card.

The copy of the COSTCO membership card (Item # 1 above), above does not indicate whether it was issued to the applicant in the United States or abroad. The copy of the identification card from the Van Nuys Community Adult School (Item # 5 above), is a poor quality copy which does not show the date of issue. The applicant has not submitted any evidence to establish his continuous residence from February 13, 2001, or his continuous physical presence in the United States from March 9, 2001, to April 13, 2001, the date he filed his initial application. 8 C.F.R. §§ 244.2 (b) and (c). Consequently, the director's decision is affirmed for these reasons.

Beyond the decision of the director, the applicant has provided no further evidence to establish that he is a national or citizen of El Salvador. The record does not contain any photo identification such as a passport or national identity document to establish his nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1). The application must also be denied for this additional reason.

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 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.