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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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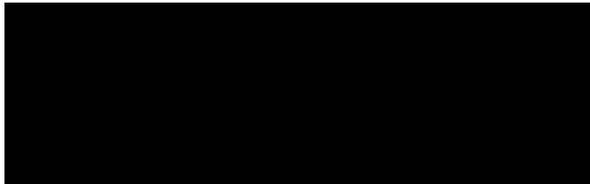


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: OCT 06 2009  
[EAC 07 312 81263]

IN RE: Applicant: [REDACTED]

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

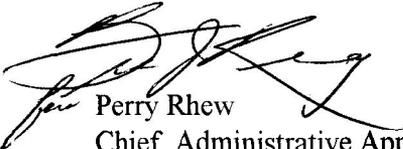
ON BEHALF OF APPLICANT:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
Perry Rhew  
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 case will be remanded.

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 director determined that the applicant failed to establish that he was eligible for filing his TPS application after the initial registration period from March 9, 2001 through September 9, 2002. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant has never received any notification that his asylum application had been denied.

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 as 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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 10, 2010, upon the applicant's re-registration during the requisite period.

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 United States Citizenship and Immigration Services (USCIS). 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 of proceeding confirms that the applicant filed his TPS application on July 31, 2007, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On April 7, 2008, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his nationality and identity, his continuous residence in the United States since February 13, 2001 and his continuous physical presence in the United States from March 9, 2001 to the date of filing the application. The applicant, in response, provided evidence of his nationality and identity and submitted evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. The director found that the applicant had established his nationality and identity and that he had met the continuous residence and continuous physical presence requirements for TPS. The director determined, however, that the applicant had not established eligibility for late initial registration because his application for asylum

had been denied on September 11, 2005, and the applicant did not file an application for TPS within 60 days of the date of that denial. Therefore, the director denied the application.

On appeal, counsel contends that the applicant never received any notification that the asylum application had been denied.

The applicant and his attorney have consistently maintained throughout the application process that the applicant did not receive notification that his asylum application had been denied. While the director stated in his decision that the asylum application had been denied on September 11, 2005, the record of proceeding does not support the director's denial of the TPS application because a copy of denial of the asylum application is not in the record. It is noted that the applicant stated on the Form I-821, TPS application, in the space provided for an applicant to list current immigration status, that he entered the United States "EWI Asylum Denied." Counsel asserts that the applicant submitted the TPS application only after learning that his latest Form I-765, Application for Employment Authorization, submitted in connection with his asylum application, had been denied due to the denial of his asylum application.

It is not clear from the record of proceeding whether the applicant's asylum application was denied and that the application was notified of such denial. The director's decision denying the TPS application will be withdrawn and the case will be remanded. The director shall review all records pertaining to this applicant and include a copy of the notice of denial of the asylum application in the record. The director may request any evidence deemed necessary to assist him with the determination of the applicant's eligibility for late initial filing for TPS.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

The case is remanded for action consistent with the foregoing. Should the decision be adverse, the applicant shall be permitted to file an appeal, without fee.

**ORDER:** The case is remanded.