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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: APR 01 2010  
[EAC 09 107 77748]

IN RE: Applicant: [REDACTED]

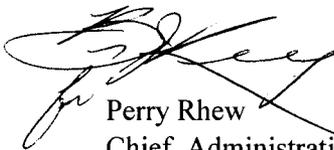
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration  
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:  
[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.

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 appeal will be dismissed.

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 he: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director also determined that the applicant was ineligible for TPS because he had ordered, incited, assisted or otherwise participated in the persecution of others. In addition, the director found that the applicant had failed to submit certified judgment and conviction documents regarding the applicant's criminal history. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant is eligible for and qualifies for TPS. The applicant also submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

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 parole; 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.

*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.

*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 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 9, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The applicant filed his initial TPS application on October 16, 2007. The Director, Vermont Service Center, denied the application for abandonment on September 9, 2008 because the applicant failed to submit requested court documentation relating to his criminal record and failed to submit evidence of his continuous residence and continuous physical presence in the United States during the qualifying period. The applicant did not file a motion to reopen the director's decision.

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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed this application on December 29, 2008 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).

The director stated in the June 30, 2009 denial of the instant application that the applicant had been informed on September 9, 2008, of the reasons for denial of his initial TPS application. The director determined that the applicant has not provided any new and compelling evidence to overcome the reasons for denying the initial TPS application. In addition, the director determined that the applicant had not established that he had met the continuous residence and continuous physical presence requirements for TPS, and failed to establish his eligibility for late initial registration. The director also found that the applicant is ineligible for TPS because the applicant ordered, incited, assisted or otherwise participated in the persecution of others. Therefore, the director denied the application.

On appeal, counsel states that the applicant is eligible for and qualifies for TPS. The applicant submits evidence in an attempt to establish his continuous residence and continuous physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file his TPS application within the initial registration period. The applicant has not submitted sufficient evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant failed to establish his eligibility for late registration will be affirmed.

The second and third issues in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

In support of his TPS application, the applicant submitted copies of his Social Security Card and his passport, issued in Dallas, Texas on January 31, 2006.

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant submits:

1. Copies of an employment verification statement from [REDACTED], a Tax Return Transcript for tax periods ending December 31, 2000 to December 31, 2008.

2. Copies of a Transcript Of Judgment.

The passport establishes the applicant's identity and nationality. [REDACTED] stated that the applicant was employed from November 21, 1996 through April 8, 2008. However, this statement has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that [REDACTED] failed to identify the applicant's duties of employment. The Tax Return Transcripts indicate the applicant was employed during those years. However, those documents alone cannot establish the applicant's continuous residence and continuous physical presence in the United States during the qualifying period.

The applicant has not submitted sufficient evidence to establish his qualifying residence since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001 to the date the application was filed. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

The fourth issue in this decision is whether the applicant is ineligible for TPS because the applicant ordered, incited, assisted or otherwise participated in the persecution of others.

Section 208(b)(2)(A)(i) of the Act states in pertinent part:

- (A) In general – Paragraph (1) shall not apply to an alien if the Attorney General determines that that – (i) the alien ordered, incited, assisted or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

On appeal, counsel states that the applicant was a civil servant and was not a member of the military or some other paramilitary group and he did not order, incite, assist or otherwise participate in the persecution of any person on any basis and there is nothing in the record to indicate that he did. However, the director determined that during his asylum application interview, the applicant stated that he joined the Civil Patrol as a commander in Tahuilapa around 1984 and served for eight years. According to the applicant's testimony, he was involved in serving warrants on some individuals who were then ordered to go to the police commander and some of those individuals were hurt or killed. The applicant further stated that too many people were hurt or killed to remember. Therefore, the documentary evidence leads to the conclusion that the applicant participated in issuing warrants to individuals and knew some were hurt or killed. In addition, the El Rescate database demonstrates that state security forces committed human rights abuses including capture, extrajudicial killings and indiscriminate military attacks in Santa Anita department during the time period the applicant served. The persecutor bar applies even if the applicant did not personally commit the persecutory act, so long as the applicant ordered, incited, assisted, or otherwise participated in the persecution of

a person. The applicant was present in the areas documented as locations where human rights abuses took place. The applicant failed to establish that he did not take part, in any fashion, of any violation. Therefore the director's decision to deny the application on this basis is affirmed.

Finally, on appeal, the applicant submitted court documents concerning his criminal history. According to the court transcript, on February 4, 2002, the applicant was arrested by the Fort Smith, Arkansas Police Department for "DWI." [REDACTED] On April 15, 2002, the applicant pled guilty and was convicted of "DWI," a misdemeanor. The applicant has failed to provide the final court disposition for an October 30, 1996 arrest by the Van Buren, Arkansas Police Department for "Shoplifting." Therefore, the applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

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.