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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**

[REDACTED]

M

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Applicant:

[REDACTED]

DEC 14 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 (AAO) 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 failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, counsel puts forth the same rebuttal that was submitted in response to the Notice of Intent to Deny.

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 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 Secretary 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 Temporary Protected Status 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.

The term *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 term *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 designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until March 9, 2012, upon the applicant's re-registration during the requisite time 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 U.S. 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).

On his TPS application the applicant indicated that he entered the United States on June 11, 2006.

On February 25, 2010, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001 and continuous physical presence since March 9, 2001, in the United States. Counsel, in response, asserts that the applicant is a child of a TPS registrant and, therefore, he can apply anytime. Counsel asserts that the regulation at 8 C.F.R. § 244.2(f)(2)(iv) "does not ADD that the *applicant* should have arrived since the effective date set forth for any TPS program." Counsel submitted a copy of the employment authorization card of the applicant's father, copies of the applicant's birth certificate with English translation and an Office of Refugee Resettlement Verification of Release Form dated June 12, 2006, from the U.S. Department of Health and Human Services.

The director noted that the applicant had arrived in the United States on June 3, 2006 and, therefore, he failed to establish continuous residence since February 13, 2001, and continuous physical

presence since March 9, 2001. The director concluded that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 29, 2010.

While regulation at 8 C.F.R. § 244.2(f)(2)(iv) allow children of aliens who are TPS-eligible to file applications after the initial registration period had closed, this regulation does not relax the requirements for eligibility for TPS. As provided in 8 C.F.R. § 244.2(b) and (c), the applicant must establish that he has continuously resided in the United States since February 13, 2001, and has been continuously physically present from March 9, 2001, to the date of filing the application. The extension of the TPS designation (which, at the time the application was filed, was September 9, 2010) is not a new designation, but rather it is an extension of the designation. This extension requires that El Salvadorans who have been *granted* TPS must re-register during the re-registration period.

Further, as stipulated in section 244(c) of the Act, the Attorney General designated the dates required to establish continuous residence and continuous physical presence as February 13, 2001, and March 9, 2001, respectively. In this case, the applicant was not present in the United States during the requisite periods required to establish continuous residence and continuous physical presence. The AAO is bound by the clear language of the statute and lacks the authority to change the statute. The statute did not provide for a waiver of continuous residence and continuous physical presence requirements.

The applicant has failed to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application 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.

While not the basis for the dismissal of the appeal, it is noted that the record reflects that a Form I-862, Notice to Appear, was issued and served on the applicant on June 8, 2006. The applicant's Form I-589, Application for Asylum and Withholding of Deportation, was filed on April 24, 2007. A removal hearing was held on January 22, 2008, and the applicant's asylum application was denied and he was ordered removed from the United States. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On June 5, 2009, the BIA dismissed the applicant's appeal.

ORDER: The appeal is dismissed.