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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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FILE: [REDACTED] Office: BALTIMORE
[EAC 018257 56188]
[EAC 99 070 51673 - MOTION]

Date: FEB 02 2010

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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, Baltimore, withdrew the applicant's TPS because he determined the applicant was not eligible for TPS as he had failed to appear at a scheduled removal hearing and failed to establish exceptional circumstances for his absence.

On appeal, counsel for the applicant contends that the withdrawal of the applicant's TPS was incorrect because the applicant had not received notification of the time and date for his removal hearing.¹ The applicant did not submit any additional evidence to establish that he has met the continuous residence and continuous physical presence requirements for TPS.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

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 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

¹ Counsel submits a copy of Form EOIR I-33/IC, dated May 26, 2008, indicating the applicant's new address as [REDACTED] however, the record does not contain the original of that form. The record does contain a Form AR-11, Alien Address Change Card, dated October 7, 2007, which was received on October 12, 2007 and indicated the applicant's new address as [REDACTED]. The record does not contain any notices that were returned as unclaimed.

- (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.
- (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. A subsequent extension of the TPS designation has been granted with validity until September 9, 2010, 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 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 reveals that the applicant filed a TPS application during the initial registration period on August 22, 2001, under receipt number EAC 01 257 56188. The Director, Vermont Service Center, denied that application on August 8, 2003, because the applicant failed to respond to a request for evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. The applicant filed an appeal from the denial decision. The Director (now Chief), AAO, dismissed that appeal on March 18, 2008. The AAO noted that there were discrepancies in the documentation submitted by the applicant, and determined that the applicant had not established that he had continuously resided in the United States since February 13, 2001, and been continuously physically present in the United States since March 9, 2001.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on October 12, 2007 and indicated that he was re-registering for TPS.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In the present case, the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. However, on December 3, 2007, while the applicant's appeal was pending, the Director, Vermont Service Center, incorrectly approved the re-registration application and sent a Form I797C, Notice of Action, to the applicant. The District Director, Baltimore, subsequently withdrew approval of the applicant's TPS because he determined that the applicant failed to appear at a scheduled removal hearing. In this case, the applicant's TPS should have been withdrawn because he was not eligible to re-register for TPS. However, the applicant is not eligible for TPS re-registration as he has not been afforded a previous grant of TPS. The applicant has not submitted any evidence with the instant appeal to establish that he has met the continuous residence and continuous physical presence requirements for TPS.

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 applicant will be denied for the above stated reasons with each considered as an independent and alternate reason for denial.

ORDER: The appeal is dismissed.