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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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U.S. Citizenship  
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**FEB 24 2010**

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE:  
[REDACTED] [EAC 09 071 74086]  
[REDACTED] consolidated therein]

IN RE: Applicant: [REDACTED]

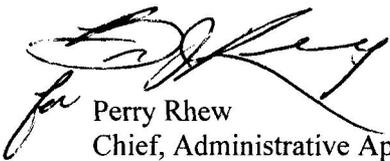
APPLICATION: Application for Temporary Protected Status under Section 244 of the  
Immigration and Nationality Act, 8 U.S.C. § 1254

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 or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).

  
for 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 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 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 asserts that the applicant is eligible for TPS because he had previously filed a timely TPS application and had been residing in the United States since January 1985. Counsel submits evidence to establish the applicant's identity and continuous residence and continuous physical presence in the United States during the requisite period.

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 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
- (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 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 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 record reflects that the applicant filed his initial application on August 22, 2002. The Director, Vermont Service Center, denied that application on March 23, 2004, because the applicant failed to respond to the Notice of Intent to Deny dated August 18, 2003. The applicant did not appeal the denial of this application.

On June 24, 2004, a Form I-862, Notice to Appear, was issued which requested the applicant to appear before an immigration judge (IJ) on July 29, 2004. The applicant failed to appear and the IJ ordered the applicant removed *in absentia*.

On December 1, 2008, the applicant filed a subsequent TPS application under the late initial filing provision. The Director, Vermont Service Center, denied this application on June 8, 2009, because the applicant failed to establish his eligibility for late initial registration.

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).

On March 23, 2004, and June 8, 2009, the applicant was informed of the reasons why his TPS applications had been denied. The director determined that the applicant has not provided any new and compelling evidence to overcome the reasons for denying those applications. Therefore, the director denied the application.

On appeal, counsel argues the director erred in his findings that the applicant failed to establish residence since February 13, 2001 and physical presence since March 19, 2001, as the applicant had been arrested in New York on February 6, 1996. Counsel provides court documentation reflecting that the charges from this arrest were dismissed by motion on December 11, 2006. Counsel asserts that the applicant's eligibility at the time his 2002 TPS application was filed "equates to relief from removal."

The applicant did not provide sufficient evidence to establish his continuous residence and physical presence during the requisite period at the time he filed his initial TPS application. The applicant was given the opportunity to submit evidence to establish his eligibility; however, neither he nor his former counsel responded to the Notice of Intent to Deny and no appeal was filed. The applicant's arrest in New York on February 6, 1996 only serves to establish that he was in the United States on that particular date; it does not establish *continuous* residence or physical presence.

A TPS application is not a change of status application. Change of status, by regulation, is limited to a change of one nonimmigrant classification to another. TPS does not render nonimmigrant status to the applicant. Consequently, it does not qualify as a change of status application.

To qualify for late registration, the applicant must provide evidence that at the time of *the initial registration period* (March 9, 2001, to September 9, 2002) he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). The provisions for late registration detailed were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. Having an application for TPS during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2).

As previously noted, the applicant's removal proceedings occurred subsequent to the initial registration period. Based on the evidence contained in the record, the applicant did not have an application or any relief from removal that was pending during the initial registration period. Consequently, the director's decision to deny the application for temporary protected status 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.

Finally, the record reflects that on December 1, 2005, a Form I-205, Warrant of Removal/Deportation, was issued.

**ORDER:** The appeal is dismissed.