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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
and Immigration
Services**

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FILE: [REDACTED]
[EAC 08 168 50724]

Office: VERMONT SERVICE CENTER

Date: **JAN 08 2010**

IN RE: Applicant: [REDACTED]

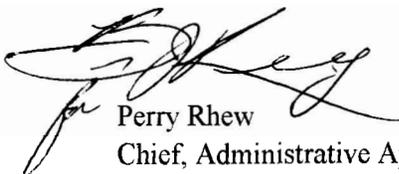
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:
[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 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 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, therefore, denied the application.

On appeal, counsel for the applicant states that the decision must be reversed and the application should be granted. 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 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.

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 10, 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 shows that the applicant filed this application on May 19, 2008.

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 his application 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 August 27, 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 filing date of the application. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. He did not present evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, counsel states that the applicant is eligible for late initial registration. According to counsel, during the initial registration period, the applicant was dependent on his father's Form I-589, Application for Asylum and for Withholding of Removal and to his knowledge that application was still pending. Counsel asserts that the applicant never received notice that the Form I-589 had been denied and he submitted his TPS application approximately 2 weeks after the 60-day expiration of status. The record does not contain any evidence to indicate that the applicant was actually informed that the asylum application was denied. Consequently, this basis for the director's denial of the application must be withdrawn.

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 birth certificate, with English translation and his passport, issued in Woodbridge, Virginia on October 5, 2006. The applicant also submitted copies of Employment Authorization Cards dated from October 12, 2000 to October 29, 2007, and a letter from [REDACTED].

As stated above, the applicant was requested on August 27, 2008 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. Copies of school records for 2000-2001 and 2008-2009; a letter from [REDACTED]; immunization records indicating inoculations on June 13, 2000, August 31, 2001, and November 21, 2002; and a State of Virginia Children's Identification Card issued on June 26, 2001.

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:

2. Copies of pay stubs for the applicant's father dated October 16, 2008, October 23, 2008, and October 30, 2008 and an unsigned 2007 Form 1040, U.S. Individual Income Tax Return.
3. Copies of Notices of Action from the City of Manassas Department of Social Services dated September 29, 2008; part of an unsigned Deed of Lease dated July 17, 2008; and a City of Manassas Department of Utilities Customer Service Receipt dated July 29, 2008.
4. Copies of a letter from Manassas City Schools dated August 11, 2008; a letter from the Commonwealth of Virginia Department of Social Services Division of Child Support Enforcement Closure Intent Notice dated January 14, 2008.
5. Copies of a City of Manassas Public Schools Elementary Cumulative Report for 2001-2002 through 2004-2005.
6. Copies of unsigned parts of 2001 – 2006 Form 1040, U.S. Individual Income Tax Returns.

The passport and birth certificate establish the applicant's identity and nationality. The Employment Authorization Cards and some of the school and immunization records indicate the applicant was present in the United States prior to the qualifying dates to establish continuous residence and continuous physical presence. The pay stubs, tax documents, lease and correspondence from the City of Manassas and the Commonwealth of Virginia do not pertain specifically to the applicant. [REDACTED] states that the applicant was a student at [REDACTED] during the 2007-2008 school year and that the applicant was enrolled in the Manassas City School System on August 20, 2001. [REDACTED] states that the applicant was enrolled at [REDACTED] during the 2008 -2009 school year and first entered the Manassas City Public Schools at [REDACTED] on September 4, 2001. The Cumulative Report indicates the applicant attended elementary school from 2001 through 2005. Consequently, the applicant has submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

The applicant has 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, established that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, this basis for the director's denial for the application will be withdrawn.

However, it is not clear from the record that the applicant was informed that his father's asylum application was denied. Therefore, the case is remanded so that a copy of the decision denying the asylum application of the applicant's father, and evidence that this notice was provided to the applicant, can be added to the record.

ORDER: The case is remanded for appropriate action and decision consistent with the foregoing.