

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**

M<sub>1</sub>

[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: MAY 05 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 or reopen, 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 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 was eligible for late registration. The director also denied the application because the applicant failed to establish continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States.

On appeal, counsel asserts that the director's decision is contrary to immigration rules. Counsel asserts that the director's decision is erroneous, constitutes an abuse of discretion and should be reverse.

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 re-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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 record reveals that the applicant filed his initial TPS application [REDACTED] on August 11, 2003. On December 5, 2003, the Director, Texas Service Center, denied the application because the applicant failed to establish continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001. No appeal was filed from the denial of this application.

The applicant filed a second TPS application [REDACTED] on February 2, 2005. On February 21, 2006, the Director, California Service Center, denied the application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. No appeal was filed from the denial of this application.

The applicant filed the current TPS application on September 10, 2009. To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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).

The director, in denying the current application on January 13, 2010, noted that the filing of the initial TPS application on August 11, 2003, did not equate to any of the late registration criteria under 8 C.F.R. § 244.2(f)(2). The director determined that to date, the applicant had not presented any new and compelling evidence to overcome the findings outlined in the decision of December 5, 2003.

On appeal, counsel asserts that the applicant is currently married to his spouse who is also from El Salvador, he has continuously resided in the United States since 2003, he is a national of El Salvador, and has been physically present in the United States since his last arrival.

Counsel has not provided any evidence establishing that the applicant's spouse is currently a TPS registrant. Nevertheless, the applicant must meet all other requirements, namely continuous residence since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, as required in 8 C.F.R. § 244.2((b) and (c).

Assuming, arguendo, the applicant met the late registration criteria as a spouse of an alien who is currently eligible for TPS, he still would be ineligible as he cannot establish the residence and physical presence requirements during the requisite period. . The applicant has indicated on all his TPS applications to have continuously resided in the United States since 2003. Therefore, the director's decision to deny the application for TPS 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.

**ORDER:** The appeal is dismissed.