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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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[REDACTED]

FILE: [REDACTED]  
[EAC 09 085 84921]

Office: VERMONT SERVICE CENTER

Date **MAY 06 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. The application is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the case returned to the director for further action.

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) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that he is unable to show the required evidence. The applicant also submits evidence that he is the minor child of a TPS-eligible alien.

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 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 shows that the applicant filed this application on December 12, 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 September 24, 2009, 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 continuous residence in the United States since February 13, 2001. 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, the applicant states that he is unable to show the required evidence. The applicant also submits evidence that he is the minor child of TPS-eligible alien. Consequently, the applicant is eligible for late initial registration.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001.

As stated above, the applicant was requested on September 24, 2009, to submit evidence establishing his qualifying continuous residence in the United States. In response, the applicant submitted the following documentation:

1. Copies of a 2001 -2002 identification card from Kennedy Elementary; a medical identification card dated April 25, 2007; an undated identification card from Jane Long Middle School; and a Harris County Hospital District identification card with an effective date of May 18, 2009.
2. Copies of an Immunization Record indicating inoculations from August 1, 2001 to April 2, 2002, including copied information for inoculations in 1993.
3. Copies of letters from [REDACTED] and [REDACTED] a Patient Worksheet/Walkout Statement dated February 7, 2001; a Certificate of Good Conduct dated May 28, 2002; a 2001 -2002 class picture; a 2001-2002 Grade 3 Report Card; a prescription dated March 12, 2002; dental records dated June 23, 2003; and Progress Reports in Spanish, with no English translations, bearing dates of November 2, 2001, February 13, 2002, September 26, 2001; and September 3, 2001.
4. Copies of a Harris County Hospital receipt dated February 9, 2004; Secondary Report Cards indicating enrollment dates of August 16, 2004 and August 15, 2005; a Mid-Quarter Progress Report from Jane Long Middle

School for the period from February 17, 2005 to March 7, 2005; Outpatient Records dated May 28, 2004, May 6, 2005, and August 30, 2006; a 2006-2007 Student Contract from Jane Long Middle School; a Long Middle School Progress Report for the 2007 - 2008 school year; a Counselor Report of Student Academic Record indicating an enrollment date of August 25, 2008; Lee High School Progress Reports for periods ending December 5, 2008 and October 2, 2009; and a date-stamped envelope from Lee High School dated April 16, 2009.

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:

5. Copies of a passport issued in Houston, Texas on May 12, 2009 and a birth certificate with English translation.
6. Copies of a report card from Kennedy Elementary School in the Spanish language with no English translation; a letter from Alief Independent School District dated September 12, 2001; 2001 and 2002 tax documents for the applicant's parents; documents from Alief Independent School District in Spanish with no English translation; an Elementary Summer School Final Progress Report dated July 11, 2002; an Outpatient Record dated November 30, 2002; employment authorization cards for the applicant's parents; passports and birth certificates of the applicant's parents.

The applicant also resubmitted evidence previously provided.

The passport and birth certificate establish the applicant's identity and nationality. These documents establish that the applicant continuously resided in the United States since February 13, 2001 and maintained continuous physical presence from March 9, 2001 to the filing date of the TPS application. 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).

Therefore, the director's decision will be withdrawn and the application will be approved.

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 applicant has met this burden.

The record does not reflect any grounds that would bar the applicant from receiving TPS. As there are no other known grounds of ineligibility; the director's decision will be withdrawn. However, the

validity period of the applicant's fingerprint check has expired.

Accordingly, the case is returned to the director for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements, without fee.

**ORDER:** The applicant's appeal is sustained and the case is returned to the director for appropriate action and decision consistent with the foregoing.