

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: JUN 11 2012

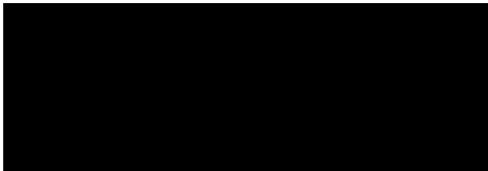
Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: [REDACTED] Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".
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 (AAO) 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 had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts that the regulation at 8 C.F.R. § 244.2 gives no clear standing with regards to whether the derivative beneficiaries must also meet the eligibility requirements of the principal TPS applicant.

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.

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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until September 9, 2013, 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 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The applicant filed his initial TPS application on November 22, 2010.

The record reflects that during the initial registration period, the applicant was a child, his parent was a TPS registrant and USCIS records reflect that his parent is currently eligible to be a TPS registrant. As such, the applicant has established late registration eligibility. *Matter of N-C-M-*, 25 I&N Dec. 535 (BIA 2011).

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated February 5, 2005, which indicates that the applicant entered without inspection and was subsequently apprehended by the U.S. Border Patrol on February 5, 2005.

Based on the applicant's entry into United States on February 5, 2005, the director determined that the applicant had failed to establish continuous residence since February 13, 2001 and continuous physical presence since March 9, 2001, and denied the application on December 6, 2011.

Although the applicant has established that during the initial registration period, he was a child of an alien who was a TPS registrant, the regulations do not relax the requirements for eligibility for TPS. The child is still required to meet the residence and physical presence requirements. According to 8 C.F.R. § 244.2, an alien may be granted TPS if the alien establishes that he or she meets the requirements listed in subparagraphs (a), (b), (c), (d), (e) and subparagraph (f)(1), or (f)(2).

Further, the statute provided in section 244(c) of the Act states that a national of a designated foreign state is eligible for TPS if, (i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state; and (ii) the alien has continuously resided in the United States since such date as the Secretary may designate. The Secretary designated the dates required to establish continuous residence and continuous physical presence as February 13, 2001 and March 9, 2001, respectively. The applicant, in this case, was not present in the United States during the requisite periods required to establish continuous residence and continuous physical presence. Therefore, he cannot meet the criteria for continuous residence and continuous physical presence in the United States. 8 C.F.R. § 244.2(b) and (c). The AAO is bound by the clear language of the statute and lacks the authority to change the statute. Further, the statute did not provide for a waiver of continuous residence and continuous physical presence requirements. Consequently, the director's decision to deny the TPS application on these grounds 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, while not the basis for the dismissal of the appeal, it is noted that the record reflects that a removal hearing was held on August 14, 2009, and the applicant was ordered removed from the United States. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On October 7, 2010, the BIA dismissed the applicant's appeal.

ORDER: The appeal is dismissed.