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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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M

[REDACTED]

DATE: **MAR 16 2012** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: 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:

[REDACTED]

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


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 (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 the applicant is eligible for late registration because he was a child of a TPS registrant during the initial registration period. Counsel citing several case laws asserts that the applicant is eligible for TPS because his father's domicile is imputed to him.

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 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 Form I-213, Record of Deportable/Inadmissible Alien, reflects that on December 11, 2007, the applicant was encountered by the U.S. Border Patrol after having entered the United States without inspection, six miles east of the [REDACTED] Port of Entry. At that time, the applicant stated that he resided in [REDACTED] with his grandmother and that he was going to [REDACTED] California to reside with his parents. The applicant stated that he departed [REDACTED] on November 23, 2007, and that this was his first entry into the United States.

Citing various case law permitting imputation of a parent's "lawful unrelinquished domicile" and "continuous residence" to the unemancipated minor child, counsel asserts that the applicant's continuous physical presence and continuous residence in the United States should be imputed to the

applicant for the time that he was an unemancipated minor. Counsel further asserts that there is no logical reason to refuse to impute the continuous physical presence and continuous residence accrued by the applicant's father to the applicant.

The applicant is applying for TPS under section 244 of the Act. The case laws cited by counsel relates to aliens who are lawful permanent residents, seeking asylum, under removal proceeding, suspension of deportation or cancellation of removal, and does not relate to the applicant's case.

Counsel's assertions that the applicant qualifies for TPS based on his father's continuous residence and the "most recent designation for El Salvador in March 2006" are not persuasive.

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; (ii) the alien has continuously resided in the United States since such date as the Secretary may designate.

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. First, the most recent date of the designation for ██████████ was March 9, 2001.¹ As stipulated in section 244(c), above, the Secretary designated the date required to establish continuous residence as February 13, 2001, and continuous physical presence since March 9, 2001. Second, the extension of the TPS designation is not a new designation rather, it is an extension of the designation. Third, there was no extension of the designation for ██████████ in March 2006. 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 the continuous residence and continuous physical presence requirements.

The applicant arrived in the United States subsequent to the eligibility period. Therefore, he cannot meet the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application on this ground 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.

¹ The 1991 TPS designation for ██████████ terminated on June 30 1992, and is unrelated to the recent 2001 TPS re-designation.