



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF L-E-G-H-

DATE: SEPT. 10, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of El Salvador, seeks Temporary Protected Status. *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254a. The Director, Vermont Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed. On September 4, 2014, the Director denied the application because the Applicant did not establish continuous residence in the U.S. since February 13, 2001, and continuous physical presence in the U.S. since March 9, 2001.

On appeal, the Applicant asserts that he entered the United States in May 2005 and that he is not required to establish physical presence during the initial registration period because he is applying as a derivative late registrant.

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 temporary protected status (TPS) 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 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

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. *Id.*

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. *Id.*

Persons applying for TPS offered to 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 Salvadorans has been extended several times, with the latest extension valid until September 9, 2016, 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. 8 C.F.R. § 244.9(b). To meet this burden of proof the Applicant must provide supporting documentary evidence of eligibility apart from the Applicant's own statements. *Id.*

The Applicant filed this TPS application on September 30, 2013. The Applicant submitted documentary evidence establishing that he is a child of a TPS registrant. The Applicant is therefore eligible for late registration under 8 C.F.R. § 244.2(f)(iv). *See Matter of N-C-M-*, 25 I&N Dec. 535 (BIA 2011).

On April 2, 2014, a request for evidence was issued requesting that the Applicant submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001. In response, the Applicant asserted that because he is a child of TPS registrant, he is not required to provide evidence of physical presence.

In *Matter of Echevarria*, 25 I&N Dec. 512 (BIA 2011), the Board of Immigration Appeals held that a late initial registrant for TPS must independently meet all initial registration requirements of TPS. Applicants qualifying for late initial registration under one of the four conditions precedent set forth in subsection (f)(2) must still establish eligibility for TPS in accordance with subsections (a) through (e). *Id.* at 518-19.

The Secretary designated the dates from which Salvadoran TPS applicants are required to establish continuous residence, as of February 13, 2001, and continuous physical presence, as of March 9, 2001. The record reflects that the Applicant did not enter the United States until May 2005. Therefore, he was not present in the United States during the requisite periods required to establish continuous residence and continuous physical presence. Accordingly, the Applicant has not established that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the Director's decision to deny the application on these grounds will be affirmed.

The appeal is dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. In application proceedings, it is the Applicant's burden to establish

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eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of L-E-G-H-*, ID# 13896 (AAO Sept. 10, 2015)