

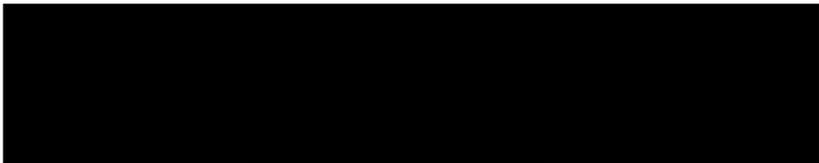


U.S. Citizenship  
and Immigration  
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MI



FILE: [REDACTED]  
[WAC 05 228 80953]

OFFICE: California Service Center

DATE: AUG 02 2007

IN RE: Applicant:



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

ON BEHALF OF APPLICANT:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center (CSC). It is now on appeal before the Administrative Appeals Office (AAO). 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 record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status, on August 5, 2003, at the Vermont Service Center (VSC) under Citizenship and Immigration Services (CIS) receipt number EAC 03 239 55801. The Director, VSC, denied that application on April 2, 2004, on the grounds that the applicant, though an eligible late registrant as the child of TPS eligible parents, failed to establish that he had been continuously resident in the United States since February 13, 2001, and continuously physically present in the United States since March 9, 2001, as required for TPS applicants from El Salvador. The applicant did not appeal the decision.

The applicant filed the current TPS application on March 25, 2005. Treating it as a re-registration application, the Director, CSC, denied the application on April 6, 2006, stating that because the applicant's initial TPS application had been denied, the applicant was not eligible to re-register for TPS.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. *See* 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Accordingly, he is not eligible to re-register for TPS.

The CSC Director's decision did not explore the possibility that the applicant was attempting to file an application for late initial registration for TPS, instead of an application for annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (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 reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

El Salvadoran nationals applying for TPS 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 initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. As previously discussed, the applicant filed his initial TPS application on March 25, 2005 – two and one-half years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions 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 Citizenship and Immigration Services (CIS). *See* 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. *See* 8 C.F.R. § 244.9(b).

On appeal the applicant – who claims to have entered the United States without inspection in October 2000 – asserts that he is “eligible for TPS since I am a dependent in my father’s TPS.” Additional documentation relating to the applicant’s residence and physical presence in the United States is submitted, including photocopies of school records over the years 2000-2006. This documentation, as well as previously submitted evidence of the applicant’s residence and physical presence in the United States, is inconsistent with the information provided by the applicant’s father in his own TPS applications.

The applicant claims eligibility for late TPS registration, under 8 C.F.R. § 244.2(f)(2)(iv), as the son of [REDACTED], a TPS registrant. To be eligible for TPS, however, the child of a TPS eligible parent must also meet the same continuous residence and physical presence requirements as the parent. A review of the alien registration file of the applicant’s father reveals that [REDACTED] on the initial TPS application he filed on March 24, 2001, listed the applicant and two other children as residing in El Salvador. In subsequent re-registration applications filed in 2002, 2003, and 2005, [REDACTED] did not list the applicant or any other children on his application forms.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such

inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to resolve the inconsistencies in his and his father's files with regard to when he came to the United States and how long he has been a resident of, and physically present in, the country. While the file of [REDACTED] confirms that the applicant is eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv), it conflicts with the applicant's assertion that he has been continuously physically present in the United States since March 9, 2001, and continuously resident in the United States since February 9, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c).

Based on the foregoing analysis, the AAO concludes that the applicant has failed to establish that he meets the continuous residence and continuous physical presence requirements for El Salvadoran nationals. Accordingly, the current TPS application, treated as a late initial application, must also be denied on those grounds.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 that burden.

**ORDER:** The appeal is dismissed.