

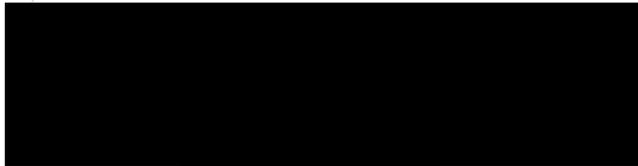


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

M1



FILE:



Office: VERMONT SERVICE CENTER

Date: NOV 01 2007

[EAC 07 014 50103]

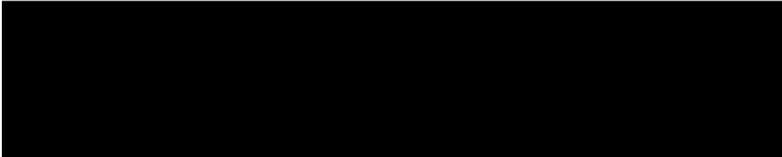
IN RE:

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 office that originally decided your case. Any further inquiry must be made to that office.

for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, who claims to be a citizen of El Salvador, 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 on March 13, 2007, because the applicant failed to establish that he was eligible for late registration. The director also found that the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, counsel for the applicant submits a brief statement, an affidavit from the applicant, and additional documentation.

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 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 § 244.3;
- (e) Is not ineligible under § 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 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.

The phrase 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 phrase 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 initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The applicant filed his initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on October 18, 2006 - more than four years and one month after the initial registration period had ended.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On appeal, counsel submits documentation indicating that the applicant's claimed father, [REDACTED] is a TPS registrant. Counsel also submits an affidavit from the applicant stating that he entered the

United States without inspection on or about May 19, 2006 at Rio Grande City, Texas. Counsel asserts that the applicant is eligible for TPS because he is under the age of 21 years and is the son of a TPS registrant.

CIS regulations allow the child of an alien currently eligible to be a TPS registrant to file an application after the initial registration period. Section 101(b)(1) of the Act defines the term "child" as an "unmarried person under twenty-one years of age." The evidence of record reveals that the applicant, who indicates that he was born on December 21, 1988, was under the age of twenty-one years throughout the initial registration period from March 9, 2001, through September 9, 2002, and at the time his TPS application was filed on October 18, 2006. Furthermore, the record reflects that the applicant's claimed father is currently a TPS-eligible applicant. However, the applicant has failed to provide a birth certificate to establish that he is, in fact, the child of [REDACTED]

It is concluded that the applicant has failed to establish his eligibility for late registration under any of the provisions described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for this reason will be affirmed.

Furthermore, the late registration provisions do not relax the other requirements for eligibility for TPS. The applicant did not enter the United States until May 19, 2006, and is, therefore, unable to establish his eligibility for TPS under the provisions described in 8 C.F.R. § 244.2 (b) and (c) because he was not continuously physically present in the United States from March 9, 2001, to the date he filed for TPS in October 2006, and has not been continuously resident in the United States since February 13, 2001. Consequently, the director's decision to deny the application for these reasons will also be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish his nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1). Therefore, the application must also be denied for this reason.

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 Temporary Protected Status 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.

It is noted that the applicant was placed in removal proceedings immediately after his entry into the United States in May 2006, and that his removal proceedings were administratively closed by an Immigration Judge in Newark, New Jersey, on October 30, 2006, "to await [a] decision on [the] TPS application."

ORDER: The appeal is dismissed.