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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 08 206 50458]

Office: VERMONT SERVICE CENTER

Date: NOV 10 2009

IN RE: Applicant: [REDACTED]

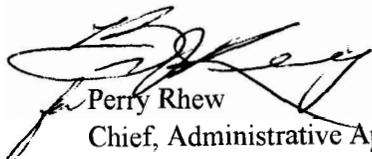
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


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 on appeal. The appeal will be dismissed.

The applicant claims to be a native and 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 determined that 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. The director, therefore, denied the application.

On appeal, the applicant states that he was a child under 21 of a current TPS beneficiary and is still under 21. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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 as designated by the Attorney General 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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.

The term *continuously physically present*, as used 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 used 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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 10, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed his initial TPS application on July 22, 2008.

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 United States 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).

In support of his TPS application, the applicant submitted:

1. Copies of school records for the period from April 21, 2008 to June 15, 2008; Texas Assessment of Knowledge and Skills Confidential Student Reports dated May 2003, May 2005, May 2007, and May 2008; Copies of College Board Student Score Reports dated February 3, 2005; Progress Reports from Austin Middle School dated October 5, 2004, and Grade Reports for the 2001-2002, 2002-2003, 2003-2004, 2004- 2005 and 2005-2006 school years.

2. Copies of an appointment notice dated September 22, 2004; a Disposition of Application for Parkland Healthplus Eligibility dated September 23, 2004; a Patient Statement of Responsibility for service on September 23, 2004, a bill for service given on September 29, 2004; dental appointments dated April 9, 2002, June 4, 2002, July 16, 2002 May 20, 2003; a letter from Dental Health Programs, Inc. dated March 19, 2002; a Consent for Treatment and a Release of Information from Children's Medical Center of Dallas dated April 23, 2002; an immunization history dated November 19, 2003; an immunization notice dated November 26, 2001; Patient Discharge Instructions dated August 6, 2002; an appointment notice dated June 14, 2002; Personal Immunization Records dated October 2, 2001 and January 26, 2006; and a Notification of Approval dated September 21, 2003.

The record shows that the applicant filed his TPS application on July 22, 2008. On August 5, 2008, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided:

3. Copies of an Autopay Plus Payroll Journal receipt for the applicant's mother dated April 5, 2001; Employment Authorization cards for the years 1996 through 2007; Income Tax Returns for the years 2000 to 2004; a South Dakota Driver License issued on January 17, 2006; a passport issued in Chicago, Illinois on August 31, 2005; and, a birth certificate for the applicant's son born March 11, 2002.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, counsel states the applicant has provided sufficient evidence to establish continuous physical presence in the United States. The applicant also submits additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. Specifically, the applicant submits:

4. A statement from his mother.
5. Copies of Center for Family Medicine billing statements for services received on September 26, 2001 and October 31, 2001; and, a Center for Family Medicine receipt dated November 13, 2001.

6. Copies of 2002, 2003, 2004, 2005, 2006, and 2007 Income Tax Transcripts issued by Internal Revenue Service (IRS).
7. A November 3, 2008 statement from [REDACTED].
8. A pay stub in the name [REDACTED] for the period from March 30, 2001 to April 5, 2001.

The unsigned, undated copies of the submitted tax returns are insufficient to establish continuous residence and continuous physical presence in the United States during the qualifying period. The statement from [REDACTED] indicates the applicant's mother and her children resided with her from February 2, 2001 to March 30, 2002. It is noted that in a previous statement, the affiant stated that the applicant's mother had resided with her and she had provided food expenses and accommodations to her, however, there was no mention of children residing with her at that time. The pay stub for the applicant's mother does not establish that the applicant was residing in the United States at that time. Moreover, some of the school transcripts are not credible because they either appear to have been altered or do not show the name of the school. There are two versions of the school transcript for grade 4; one typewritten and one handwritten, and neither shows the name of the school. Even if these transcripts could be determined to be authentic, the earliest report is for the 2001 – 2002 school year. The school year would normally commence in September, so the 2001 – 2002 transcript would not establish that the applicant resided in the United States since February 13, 2001 and was continuously physically present since March 9, 2001. The remaining evidence submitted in support of the TPS application is dated subsequent to the dates required to establish continuous residence and continuous physical presence in the United States.

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 submit any objective evidence to explain or justify the inconsistencies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he has met the continuous residence and continuous physical presence requirements for TPS.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.

ORDER: The appeal is dismissed.