

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

M

[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUL 07 2004

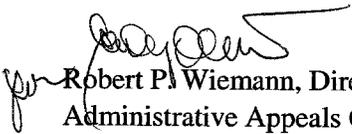
IN RE: Applicant: [REDACTED]

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


Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a native and citizen of El Salvador who is applying for 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 submit evidence to establish that she was eligible for filing for TPS after the initial registration period.

On appeal, the applicant states that she is eligible for late registration because she had submitted a motion to reopen the denial of her initial application for TPS which was pending at the time she submitted the second application for TPS.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS on July 26, 2001. That application was denied on January 7, 2002 because the director determined the applicant had failed to submit evidence of entry into the United States prior to February 13, 2001, and she had not submitted sufficient evidence to establish that she had continuously resided in the United States since February 13, 2001, and that she had been continuously physically present in the United States since March 9, 2001. The director's decision of denial clearly advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). The appeal was properly received at the Nebraska Service Center on April 2, 2002. The director treated the appeal as a motion to reopen, pursuant to 8 C.F.R. § 103.3(a)(2)(iii). On October 10, 2002, the director rejected the motion to reopen because the applicant had not provided an excusable reason for the delay in filing the Form I-290B.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on October 28, 2002. Here, the director found that the application was filed outside of the initial registration period and the applicant had failed to submit any evidence to establish that she qualified for late registration. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not specifically explain the entire basis for denial.

The applicant's initial Form I-821 was filed on July 26, 2001. That initial application resulted in a denial from the director. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application for 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. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on October 28, 2002. As the initial application was denied on January 7, 2002, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 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.
- (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 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.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 Citizenship and Immigration Services (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 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).

On April 3, 2003, the applicant was provided the opportunity to submit: (1) a copy of her birth certificate; (2) evidence to establish continuous residence in the United States since February 13, 2001; (3) evidence to establish physical presence in the United States since March 9, 2001; and (4) evidence to establish eligibility for late registration. In response, the applicant submitted a copy of her birth certificate, and evidence in support of her claim of continuous residence and physical presence in the United States during the requisite periods. The applicant stated that she was eligible for late registration because the motion to reopen her case that she submitted on April 2, 2002, was still pending on April 3, 2003, the date of issuance of the notice of intent to deny her second application for TPS. The director determined that the applicant had not established eligibility for late registration. On May 9, 2003, the director denied the application.

On appeal, the applicant submits a copy of a Form I-797C, Receipt Notice, dated April 3, 2002, acknowledging receipt of the applicant's Form I-290B, Notice of Appeal, received on April 4, 2002. The applicant also submits a copy of an August 5, 2002, Form M-180, from the Nebraska Service Center, indicating that the applicant's correspondence, LIN 02 150 50639, was "currently with an officer." The applicant maintains that she is eligible for late registration because she filed an application for TPS within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section. While the applicant's motion to reopen the denial of her initial TPS was not rejected until October 10, 2002, a Form I-290B, Notice of Appeal, does not qualify as a pending application for change of status, adjustment of status, or other criteria listed in 8 C.F.R. § 244.2(f)(2). The applicant has not submitted any evidence to establish eligibility for late registration. Consequently, the director's decision to deny the application will be affirmed.

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.