

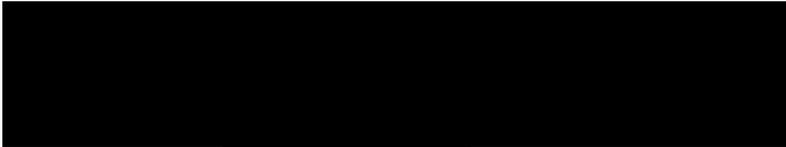


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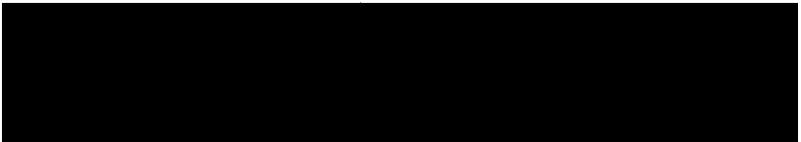
Office: VERMONT SERVICE CENTER

Date: AUG 01 2005

[EAC 03 244 51904]

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:

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, Vermont 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 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 because the applicant failed to establish she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for 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 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 her Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on August 18, 2003, more than 11 months after the initial registration period had closed.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an

application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 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 her own statements. 8 C.F.R. § 244.9(b).

In support of her initial Form I-821, the applicant submitted the following:

1. A photocopy of her El Salvadoran birth certificate, with English translation;
2. A photocopy of the identification page from her El Salvadoran passport;
3. A photocopy of a CIS Form I-94, Departure Record, indicating that she had entered the United States at Washington, D.C., as a nonimmigrant visitor for pleasure (B-2) in May 2000;
4. A photocopy of an un-translated document;
5. A photocopy of an envelope, addressed to her at a New Jersey address, postmarked September 19, 2000;
6. A letter, dated August 7, 2003, from Wendy's Old Fashioned Hamburgers, Princeton Food Services, L.L.C., Skillman, New Jersey, stating that the applicant had been employed since October 2000; and,
7. Photocopies of Princeton Food Services, L.L.C. payroll account statements issued to [REDACTED] social security number [REDACTED] for the two-week pay periods ending October 29, 2000, and November 26, 2000.

On October 1, 2003, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, the applicant submitted a letter, dated October 10, 2003, stating that she feels she is eligible to take advantage of the provisions for late registration because she has not departed the United States since her arrival in 2000. The applicant also submitted the following additional documentation:

8. A second letter, dated October 10, 2003, from Wendy's (see # 6, above); and,
9. Photocopies of an airline receipt and travel itinerary issued to her for travel from San Salvador, El Salvador to Washington, D.C., on May 11, 2000, returning to El Salvador on May 25, 2000.

The director determined that the applicant had failed to establish her eligibility for late registration, and had failed to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The director denied the application on March 9, 2004.

The first issue to be addressed in this proceeding is whether the applicant is eligible for late registration.

A review of CIS records reflects that the applicant's valid non-immigrant status expired on November 10, 2000. Therefore, she was not in valid non-immigrant status during the initial registration period from March 9, 2001, through September 9, 2002, as required under 8 C.F.R. § 244.2(f)(2)(i) for late registration. Although the applicant has submitted documentation in an attempt to establish her qualifying continuous residence and

continuous physical presence in the United States, this evidence does not mitigate her failure to apply for TPS during the initial registration period. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected on this ground will be affirmed.

The second issue to be addressed in this proceeding is whether the applicant has established her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant claims to have remained in the United States continuously from her date of entry in May 2000 to the time of filing her TPS application in August 2003. It is reasonable to expect that she would have a variety of contemporaneous evidence to support this claim.

Nos. 1 and 2, above, establish the applicant's nationality and identity. Nos. 3, 5, and 9 indicate the applicant's physical presence in the United States in May and September 2000, prior to the dates required to establish continuous residence and continuous physical presence. Nos. 6 and 8 have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, they are not in the form of affidavits and do not provide the address where the applicant resided during the period of her employment, the exact period(s) of employment, the period(s) of layoff (if any), and the applicant's specific duties with the company. No. 4 is an un-translated document, and therefore, cannot be considered in the rendering of a decision.

There are discrepancies noted in the evidence presented pertaining to No. 7, above. On her initial Form I-821, the applicant indicated that she had used the name [REDACTED] but that she did not have a social security number. However, No. 7 indicates that she used social security number [REDACTED] under the name of [REDACTED] in October and November 2000. The applicant has not explained, nor has she provided any credible evidence to support her claim, as to why and under what circumstances she used the name [REDACTED]

Based on a review of the record, it is concluded that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds, as well, 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.