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FILE: [REDACTED]  
[LIN 03 269 51309]

Office: Nebraska Service Center

Date: AUG 09 2005

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 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 her eligibility for TPS late registration.

On appeal, the applicant submits a statement in support of her claim of eligibility for TPS late registration.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence 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 September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial application with Citizenship and Immigration Services (CIS), on September 9, 2003.

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 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 October 6, 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 addition, the applicant was requested to submit evidence establishing her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted copies of her El Salvadoran passport and her Social Security card as well as some evidence in an attempt to establish her continuous residence and continuous physical presence in the United States during the requisite time periods. On December 16, 2003, the director denied the immediate application because the applicant failed to submit sufficient evidence to establish her eligibility for TPS late registration. The applicant also failed to establish her continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant filed an appeal which was received by the NSC on January 20, 2004. The appeal was untimely filed and therefore, was rejected by the director as improperly filed. The director treated the appeal as a motion to reopen, pursuant to 8 C.F.R. § 103.3(a)(1)(v)(B)(2), and rendered a decision on the merits of the case. After a complete review of the record of proceedings, including the motion, the director determined that the grounds for

denial had not been overcome. The director, therefore, affirmed his previous decision and denied the application on February 19, 2004.

On March 22, 2004, the applicant filed an appeal to the director's February 19, 2004 decision, which is now before the AAO.

On appeal, the applicant provides the following documentation in support of her eligibility for TPS: a copy of the birth certificate of her daughter born on January 1, 2002; a copy of a paycheck stub dated November 19, 2000 from Express Personnel Services; copies of her IRS Form W-2, Wage and Tax Statements, for the years 2001 and 2002; and copies of her earnings statements from Spherion Corporation dated April 29, 2001, August 26, 2001, April 19, 2002, September 8, 2002, February 9, 2003, and March 9, 2003.

The first issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

A review of the record of proceedings reflects that the applicant also submitted copies of her pay history report from Spherion Corporation reflecting payments from January 21, 2001 through April 12, 2002. Also, the applicant submitted a copy of the birth certificate of her daughter born on January 1, 2002. The applicant has also submitted copies of earnings statements reflecting regular pay from Spherion Corporation during the year 2003. Thus, the applicant has provided sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant has overcome this portion of the director's finding.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed her application after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 he or she 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). A review of the record of proceedings reflects that 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 TPS late registration will be affirmed.

The applicant submits, on appeal, additional evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Application for Temporary Protected Status within the initial registration period. It is noted that the record also reflects that the applicant was issued a nonimmigrant H2B visa in San Salvador bearing an expiration date of September 7, 2000. As mentioned previously, to qualify for late registration, the applicant must provide evidence that she was in a valid immigration status within 60 days of her filing for TPS. The applicant's status as a H2B nonimmigrant had expired three years before she filed her TPS application. Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

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 this burden.

**ORDER:** The appeal is dismissed.