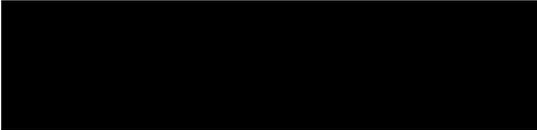




U.S. Citizenship  
and Immigration  
Services

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MM

FILE: [REDACTED]  
[WAC 03 038 51696]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **AUG 25 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, California 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 denied the application because the applicant had failed to: (1) “register in a timely manner;” and (2) submit sufficient evidence to establish continuous residence and continuous physical presence in the United States.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 condition 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 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 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 El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial application on September 16, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

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).

The director determined that the applicant had failed to establish that she was eligible for late registration and denied the application on August 17, 2004.

On appeal, the applicant asserts that she did, in fact, file her application by the September 9, 2002 deadline. She states that an accredited legal aid organization helped her prepare the application and that the application was mailed and postmarked on September 9, 2002. She added that if the records show that the application arrived at CIS after the required deadline, it was not her fault. The applicant submits copies of receipts to establish her claim that she mailed her application on September 9, 2002. The applicant further asserts that she entered the United States in 1984, she has two United States citizen children, and that she has every reason to apply. She maintains that she has been granted employment authorization for the past two years, and that if her application were not properly filed, it obviously would not have been granted.

8 C.F.R. § 103.2(a)(7) states, in part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and....shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted.

Although the applicant claims that her TPS application was mailed and postmarked on September 9, 2002, CIS records show that the TPS application was properly filed on September 16, 2002, the date the application was actually received at the California Service Center. Furthermore, the fact that the applicant was issued employment authorization is not evidence that she was granted TPS. The applicant, in this case, was granted employment authorization under 8 C.F.R. § 274a.12(c)(19) as an alien with a pending application for TPS.

The applicant has failed to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, this finding of the director will be affirmed.

The next issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

The record of proceeding contains evidence documenting the applicant's continuous residence in the United States since prior to February 13, 2001 through April 2001, and from October 2001 to the date of filing her application on September 16, 2002.

Based on the evidence of record, the applicant has established that she has continuously resided in the United States since February 13, 2001, as described in 8 C.F.R. § 244.2(c). Therefore, this finding of the director will be withdrawn.

However, no evidence was furnished to establish continuous physical presence during the period from April 2001 to October 2001. Accordingly, the finding of the director that the applicant had failed to establish continuous physical presence in the United States since March 9, 2001, as described in 8 C.F.R. § 244.2(b), will also be affirmed.

The record shows that on May 5, 2000, in the Municipal Court of Los Angeles, Van Nuys Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date April 25, 2000), the applicant was indicted for Count 1, violation of protective order/injunction, 273.6(a) PC, a misdemeanor; and Count 2, contempt of court: disobey court order, 166(a)(4) PC, a misdemeanor. On August 17, 2000, the court found the case compromised pursuant to 1377/1378 PC, and proceedings were terminated.

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.