

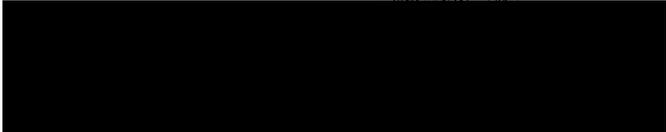


U.S. Citizenship
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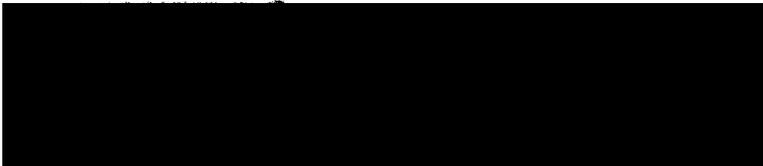


FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: DEC 14 2005
[EAC 04 020 51641]

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:



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 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 had failed to establish that she: (1) was eligible for late registration; and (2) had been continuously physically present in the United States from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement.

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 during the initial registration period on July 12, 2001. The director denied that application on May 29, 2003, after determining that the applicant had abandoned her application by failing to respond to a request for evidence. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed a subsequent Form I-821 application on October 1, 2003. The director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. Since the applicant did properly file an application during the initial registration period, the director erred in her 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 sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on July 12, 2001. That initial application was denied by the director on May 29, 2003. 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 a 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 1, 2003. Since the initial application was denied on May 29, 2003, 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 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 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 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

The director, in her decision to deny, listed the evidence furnished by the applicant in response to her request for additional evidence. Therefore, that list will not be repeated here. It is noted, however, that the applicant furnished a copy of her birth certificate with English translation and a copy of her El Salvadoran passport as evidence that she is a national of El Salvador. It is further noted that, with the exception of one letter from [REDACTED] the remainder of the evidence furnished only documents the applicant's residence in the United States as of December 2000, prior to the requisite period required to establish continuous residence and continuous physical presence.

[REDACTED] stated in her letter dated March 16, 2004, that since the applicant's "arrival, she has spent considerable amount of time with our family, in specific since January 2001. We had invited her to stay with us to help with her condition."

The statement from [REDACTED] failed to provide any specifics regarding the nature, circumstances, or origin of her acquaintanceship with the applicant, and the address where the applicant resided during the time of their acquaintance. While she indicated that she invited the applicant to stay with her, the applicant did not list Ms. [REDACTED] address as also her address in any documents furnished. Additionally, the statement was not notarized or attested to under penalty of perjury.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, this one affidavit, provided by the applicant to establish her qualifying residence in the United States, was not supported by any other corroborative evidence. The applicant claimed to have lived in the United States since May 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support her claim; however, no such evidence has been provided.

The applicant has failed to establish that she has met the criteria for continuous physical presence in the United States since March 9, 2001. 8 C.F.R. § 244.2(b). Additionally, the applicant has failed to establish that she has met the criteria for continuous residence in the United States since February 13, 2001. 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application 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.