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



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 28 2005**
[WAC 04 003 55146]

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, California 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 she was eligible for late registration.

On appeal, counsel 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 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. 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 the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 17, 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).

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on March 1, 2004.

On appeal, counsel asserts that the applicant qualifies for late initial registration because she had a pending asylum application and also a pending application for adjustment of status during the initial registration period. Counsel provides photocopies of a cash receipt from the Immigration and Naturalization Service (now CIS) acknowledging receipt of \$2020.00 from [REDACTED] for a Form I-485, Application to Register Permanent Residence or Adjust Status, filed on the applicant's behalf by her father on April 12, 1996; a notice dated April 12, 1996, acknowledging receipt of the applicant's I-485; an Employment Authorization Card issued to the applicant on January 4, 2002, based on a pending application for adjustment of status; and, an Employment Authorization Card valid from September 23, 1998 to September 20, 1999, based on a pending asylum application.

The record indicates that the applicant's father, [REDACTED] a citizen of El Salvador, filed a Form I-589, Application for Asylum and for Withholding of Deportation, on behalf of himself and his children, [REDACTED] and [REDACTED] on June 2, 1995, as a class member under the American Baptist Church (ABC) v. Thornburgh Settlement Agreement. There is no indication in the record that Mr. [REDACTED] asylum application has been adjudicated. However, the applicant turned 21 years of age on October 23, 2000. The term "child" is defined for immigration purposes at section 101(b)(1) of the Act as an unmarried

person under twenty-one years of age. As of August 5, 2000, the applicant no longer qualified for derivative asylum status based on her father's asylum application, because she was no longer a "child" as defined at section 101(b)(1) of the Act.

In order to qualify for late initial registration on the basis of her father's pending asylum application, the applicant should have filed her application for TPS within 60 days of August 5, 2000, the date she turned twenty-one. She did not file her application for TPS until September 17, 2003. Therefore, she does not qualify for late initial registration on this basis.

The record further reflects that Mr. [REDACTED] was the beneficiary of an approved Form I-130 petition as the unmarried adult son of a lawful permanent resident filed on his behalf by [REDACTED] a lawful permanent resident. On April 12, 1996, the applicant's father filed a Form I-485 for himself and each of his five children based on his approved Form I-130 petition. The applicant's application for adjustment of status was subsequently denied by the District Director, Los Angeles, on November 9, 2001, because the applicant turned twenty-one on August 5, 2000, and was, therefore, no longer eligible for adjustment of status as a derivative of her father's adjustment application.

In order to qualify for late initial registration based on the denial of her adjustment application, the applicant should have filed her application for TPS within 60 days of November 9, 2001, the date her application was denied. The applicant did not file her application for TPS until September 17, 2003. Therefore, she does not qualify for late initial registration on this basis.

The applicant has not submitted sufficient evidence to establish that she has met any of the other 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 status will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence of identity and nationality. Additionally, she has not provided any evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Therefore, the application also must be denied for these reasons.

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.