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20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



**MAY 02 2005**

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

[LIN 03 055 51875]

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, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 that 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.

The record reveals that the applicant filed a first Form I-821, Application for Temporary Protected Status, on June 19, 2001, during the initial registration period. The director denied the applicant's first Form I-821 on September 11, 2001, for failure to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The record reflects that the applicant did not file an appeal of the director's denial decision.

The applicant filed the instant, second Form I-821 on November 12, 2002. The director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. While the director found the applicant ineligible for TPS, the director's decision did not fully explain the entire basis for denial.

**Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision on that application is rendered must be considered as either a request for annual re-registration or as a new filing for TPS benefits.** If an applicant is filing an application for annual re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must re-register annually. In addition, the applicant must continue to maintain the conditions of TPS eligibility. 8 C.F.R. § 244.17.

Since the applicant's first Form I-821 was denied on September 11, 2001, her second application cannot be considered as an application for annual re-registration. The instant, second Form I-821 can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period.

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 since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. As previously indicated, the applicant filed the instant Form I-821 on November 12, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, 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 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On April 11, 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). The applicant was also requested to submit evidence to establish her nationality, identity, and qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted:

1. A photocopy of pages from her provisional El Salvadoran passport, issued in Los Angeles, California, on October 16, 1998;
2. A photocopy of her Indiana Learner Permit, issued on February 4, 2003;
3. A photocopy of her Indiana Identification Card, issued on October 5, 2001;
4. A photocopy of her social security card, number [REDACTED] and,

5. An undated letter from the [REDACTED] Indianapolis Public School No. 96 stating that [REDACTED] attended the school from August 24, 2000 through June 8, 2001;

The director determined that the applicant had failed to establish that she was eligible for TPS and denied the application on August 13, 2003.

On appeal, the applicant submits the following additional documentation:

6. A photocopy of her El Salvadoran birth certificate, with English translation;
7. A photocopy of her immunization record indicating that she had a TB skin test in June 1994;
8. A photocopy of a letter from [REDACTED] dated May 5, 2003, stating that the applicant had subcontracted work as a drywall finisher from February 2001 through May 5, 2003;
9. A letter, dated August 16, 2001, from the [REDACTED] School 96, Indianapolis, Indiana, stating that [REDACTED] was a student during the 2000-2001 school year;
10. A photocopy of a birth certificate indicating that the applicant's daughter, [REDACTED] was born on April 20, 1995, in Los Angeles, California;
11. A photocopy of a birth certificate indicating that the applicant's daughter, [REDACTED] was born on January 10, 1997, in Los Angeles, California;
12. A photocopy of a Postal Money Order receipt, dated August 29, 2003;

Based on a review of the documentation contained in the record, it is concluded that the applicant has submitted sufficient evidence (Nos. 1, 2, 3, and 6, above) to establish her nationality and identity. The applicant has not, however, 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 this reason will be affirmed.

The applicant claims to have lived in the United States since June 30, 1991. It is reasonable to expect that she would have a variety of corroborative evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing her application on November 12, 2002. Nos. 7, 10, and 11, above, indicate the applicant's physical presence in the United States in June 1994, April 1995, and January 1997, respectively, well before the dates required to establish qualifying continuous residence and continuous physical presence. Similarly, No. 12 is dated well after the required dates. Nos. 5 and 6 relate to the applicant's son and are not, by themselves, persuasive evidence of the residence and physical presence of the applicant herself. The employment letter (No. 8) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, it is not in the form of an affidavit and does not provide the address where the applicant resided during the period of her employment, the exact period(s) of employment, and the period(s) of layoff (if any).

It is concluded that the applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c).



Consequently, the director's decision to deny the application for temporary protected status for these reasons, 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.