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

MI



FILE: [REDACTED]  
[LIN 03 244 51616]

Office: NEBRASKA SERVICE CENTER

Date:

NOV 02 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 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.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for [TPS] during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant filed a first Form I-821, Application for Temporary Protected Status, (LIN 01 170 51673 relates) on April 17, 2001, during the initial registration period. At the time of filing the application, the applicant indicated her address as [REDACTED]. On June 18, 2001, the director forwarded the applicant a request, at the address indicated on her application, to submit evidence to establish her qualifying continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001. The record reflects that the applicant failed to respond to the request.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The director of the Nebraska Service Center denied the applicant's first TPS application on March 29, 2002, for failure to respond to the request for evidence. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the director's denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed the instant, second Form I-821 on August 13, 2003. 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.

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 March 29, 2002, 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.

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 August 13, 2003, more than eleven months after the initial registration period had ended.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 September 19, 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 qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

A review of the record reflects that the applicant submitted the following documentation in support of the instant application and in response to the director's request for additional evidence:

1. A photocopy of the identification page from her El Salvadoran passport;
2. A photocopy of her El Salvadoran birth certificate, with English translation;
3. A photocopy of her El Salvadoran personal identification card (*cédula*);
4. A photocopy of her "State of North Carolina Identification Card," issued on February 6, 2001;
5. Photocopies of earnings statements dating from June 17, 2000 to July 22, 2001; and,

6. A photocopy of her Social Security card, number [REDACTED]

The director determined that the applicant had 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 in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing her application. The director denied the application on December 2, 2003.

On appeal, the applicant submits the following additional documentation:

7. A letter, dated December 9, 2003, from Wells Fargo, South St. Paul, Minnesota, stating that the applicant opened an account in February 2001;
8. Photocopies of CIS correspondence addressed to the applicant in Minnesota, dating from May 2001 to November 2002;
9. A photocopy of a sales receipt, dated January 28, 2002;
10. A photocopy of a United States Postal Service postal money order receipt, dated March 19, 2001;
11. Photocopies of medical statements, dated August, October, November, and December 2001;
12. Photocopies of payment receipts, dated December 2001 to June 2002;
13. Photocopies of earnings statements, dated June, September, and October 2000, and February, March, April, June, and October 2001;
14. A photocopy of a 2002 Internal Revenue Service (IRS) Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents; and,
15. A photocopy of a 2000 IRS Form W-2, Wage and Tax Statement.

The first issue to be addressed is whether the applicant is eligible for late registration.

As previously discussed, the record confirms that the applicant filed the instant Form I-821 after the initial registration period had expired. Since the applicant's first Form I-821 was denied, the instant Form I-821 cannot be considered as an application for annual re-registration. The instant application 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. In this case, 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 on this ground will be affirmed.

The second issue to be addressed is whether the applicant has established her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant claims to have continuously lived in the United States from May 30, 2000, to the date of filing the instant application on August 13, 2003. A review of the record reveals that the applicant has no submitted any documentation to establish her residence and physical presence in the United States during 2003. Although the applicant has submitted a variety of documentation in an attempt to establish her residence and physical presence in the United States in 2001 and 2002, there are discrepancies noted in the documentation provided pertaining to the applicant's use of a Social Security number. At the time of filing her first Form I-821, the applicant indicated that she had never used a Social Security number. At the time of filing the instant

application, she indicated that she had used Social Security number [REDACTED] and submitted a photocopy of the card. However, the earnings statements provided in Nos. 5 and 13, above, indicate that she used Social Security number [REDACTED] from June 2000 to February 2001. These discrepancies in the applicant's submissions have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Furthermore, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

It is concluded that the applicant has not submitted sufficient credible evidence to establish her continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing the instant application. Consequently, the director's decision to deny the application on these grounds will also 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.