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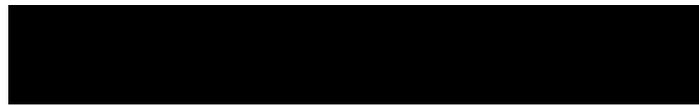


FILE: [REDACTED]  
[LIN 03 178 52246]

Office: NEBRASKA SERVICE CENTER

Date: **NOV 18 2005**

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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The record of proceeding indicates that the Director, Nebraska Service Center, denied the application on October 17, 2003. An appeal of that decision, filed on November 10, 2003, is now before the Administrative Appeals Office (AAO). The decision of the director will be withdrawn and the case will be remanded for further action.

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 reasons for the director's denial of the application are not known as the record of proceeding does not contain a full copy of his decision.

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 02 244 50676 relates) on July 25, 2002, during the initial registration period. On August 29, 2002, the director forwarded the applicant a request, at the address indicated on her application, to submit evidence in support of her application. The record reflects that the applicant failed to respond to the director's 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 denied the applicant's first TPS application on February 3, 2003, for failure to respond to the request for evidence to establish her eligibility for TPS. 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.<sup>1</sup>

The applicant filed the instant Form I-821 on May 8, 2003, eight months after the initial registration period had ended. The record of proceeding indicates that the director denied the application on October 17, 2003.

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

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<sup>1</sup> The record reflects that the applicant submitted a response to the director's August 29, 2002 request for evidence on February 26, 2003, more than six months after the time allotted by the director to submit a response, and more than three weeks after the director's decision to deny the application due to abandonment on February 3, 2002.

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 application was denied on February 3, 2003, due to abandonment, the instant application cannot be considered as an application for annual re-registration. The instant 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 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 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. 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 August 26, 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, in response, provided photocopies of CIS correspondence.

On appeal, the applicant submits a brief statement and additional documentation relating to her residence and physical presence in the United States. She has not provided any documentation to establish her eligibility for late registration.

Service instructions at O.I. 103.3(c) provide, in part, that the record of proceeding must contain all evidence used in making the decision, including the following items arranged from top to bottom in the following order:

- (1) Notice of Entry of Appearance as Attorney or Representative (Form G-28).
- (2) Brief, statement, and/or supporting evidence.
- (3) Notice of Appeal to the Administrative Appeals Office (Form I-290B).
- (4) Decision.

- (5) Any response to notice of intent to take unfavorable action.
- (6) Notice of intent to take unfavorable action.
- (7) Investigative reports and/or other derogatory information.
- (8) Application or petition.
- (10) Evidence in support of application or petition.

As the record of proceeding does not contain a full copy of the director's decision to deny the application, the decision of the director will be withdrawn and the record will be remanded so that the director can properly adjudicate the case and enter a new decision.

As always in these proceedings, an alien applying for temporary protected status has the burden of proving that she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act.

**ORDER:** The matter is remanded to the director for further action consistent with the foregoing discussion and entry of a new decision.