



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[EAC 03 077 51730]

Office: VERMONT SERVICE CENTER

Date: NOV 18 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.

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) 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 that she was eligible for late registration.

On appeal, the applicant submits a brief statement and additional documentation.

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.

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 properly filed her initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on November 13, 2002, more than two months after the initial registration period had ended.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or 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 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).

On March 26, 2003, the director requested the applicant to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director also requested the applicant to submit evidence establishing her continuous residence in the United States since February 13, 2001, and her continuous physical presence since March 9, 2001. In response, the applicant provided documentation relating to her residence and physical presence in the United States. She also submitted a letter claiming that she qualified for late registration because: (1) she was a nonimmigrant or had been granted voluntary departure status; (2) was married to German Hernandez, a NACARA<sup>1</sup> recipient; (3) had an application pending for change of status, asylum, or voluntary departure; and, (4) that her initial TPS application to the VSC was postmarked on October 31, 2002.

The director determined that the applicant had failed to establish that she was eligible for late registration and denied the application on July 9, 2003. The director noted that: (1) there was no evidence in CIS records that the applicant had ever been granted voluntary departure; (2) on her Form I-821, the applicant indicated that she was single; (3) there was no evidence in CIS records to establish that the applicant had a pending application for change of status, asylum, or voluntary departure; and, (4) the fact that the Form I-821 was received after the expiration of the initial registration period is the reason why the applicant must establish that she qualifies for late registration under 8 C.F.R. § 244.2(f)(2).

On appeal, the applicant states that although she is single, [REDACTED] and she have three children and live together as husband and wife. The applicant also submits documentation indicating that, on November 24, 1998,

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<sup>1</sup> The Nicaraguan Adjustment and Central American Relief Act, Public Law 105-100.

the applicant withdrew her applications for asylum and withholding of deportation at a hearing before an immigration judge, and that the immigration judge granted the applicant voluntary departure, with an alternate order of deportation, to El Salvador on or before November 24, 1999. It is noted that CIS records reflect that the applicant's asylum application was administratively closed on November 15, 2000

Although the applicant has submitted evidence in an attempt to establish her qualifying continuous residence and physical presence in the United States, this evidence does not mitigate her failure to apply for TPS during the initial registration period. **At the time of the initial registration period (from March 9, 2001, through September 9, 2002)** the applicant was not a nonimmigrant, had not been granted voluntary departure, did not have an application for asylum pending, was not the spouse of a TPS registrant, nor was she eligible for late registration under any other of the provisions found 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.

It is noted that the applicant failed to depart from the United States on or before November 24, 1999, as granted by the immigration judge. Therefore, the alternate order of deportation to El Salvador remains outstanding.

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.