

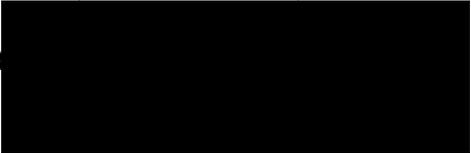


U.S. Citizenship
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FILE: [REDACTED]
[EAC 04 098 50011]

Office: VERMONT SERVICE CENTER

Date: OCT 04 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, Vermont 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 for TPS because the applicant failed to establish she was eligible for late registration. The director also determined that she had submitted insufficient evidence showing that she has continuously resided in the United States since February 13, 2001 and been continuously physically present since March 9, 2001.

On appeal, the applicant states that after her case was closed in December 2003, she was informed that she would have the opportunity to start her TPS process all over again by filing a late initial filing. The applicant indicates that she has had an extremely difficult time producing documents for her application although in her prior letters to the director, she has forwarded affidavits from friends as well as from her church pastor. The applicant forwards a letter from her current employer for consideration.

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

The record reflects that the applicant filed a Form I-821, Application for Temporary Protected Status on September 10, 2002, shortly after the initial registration period ended on September 9, 2002. That application was denied on August 11, 2003 because the applicant had failed to provide evidence meeting the requirements for residence and maintaining a physical presence in the United States as defined by the Attorney General. The applicant did not file either a motion or an appeal during the requisite timeframe. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed this subsequent Form I-821 on February 13, 2004. Since the initial application was denied and this subsequent application was filed after the latest initial registration period ended on September 9, 2002, it must be considered as a late registration.

Section 244(c) of the Act, and the related regulations at 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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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 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, an 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 April 22, 2004, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit identity documentation and evidence establishing her qualifying residence and physical presence in the United States. The applicant, in response, provided identity documentation and evidence relating to her continuous residence and continuous physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on July 6, 2004.

The applicant has submitted evidence in an attempt to establish her qualifying continuous residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file an approvable Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that she has met the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

The second issue raised by the director in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001 and her continuous physical presence in the United States since March 9, 2001.

Upon initial submission with her first application, the applicant forwarded:

1. A letter dated September 7, 2002 from [REDACTED] who states she has known the applicant since February 2001.
2. An affidavit dated September 9, 2002 from [REDACTED] who states that he knew the applicant has been physically present in the United States since February 2001.

On May 12, 2003, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The record does not reflect that the applicant responded to the director's notice. The director therefore, denied the application on August 11, 2003. The applicant did not submit an appeal. While the applicant states that she was unaware that her initial application had been denied, the notice was mailed to the applicant's last known address.

In response to the director's April 22, 2004 Notice of Intent to Deny the applicant's subsequent application for TPS, the applicant submitted:

3. A letter dated May 9, 2004 from Isidro Gonzalez as pastor and Martin S. Lobo as secretary of Inglesia Apostolica Fuente Del Libano Efesios 2:20, her church in Islip, New York. They attest to her being a member of their church since February 2001.
4. A copy of her Republic of El Salvador passport issued on May 6, 2004 in Long Island, New York.

On February 15, 2004, the applicant submitted a subsequent TPS application. Along with her current application, she submitted:

5. An affidavit dated February 7, 2004 from ~~Edward Farrington~~ who indicates that he has known the applicant since she arrived in this country in February 2001
6. An affidavit dated February 7, 2004 from [REDACTED] who indicates that he has known the applicant since she arrived in the United States on February 2, 2001.
7. Copies of the applicant's IRS Form W-2, Wage and Tax Statement from Glass Surface Systems, Inc. in Deer Park, New York for 2003.
8. Copies of the applicant's IRS Form W-2 Wage and Tax Statement from Tape-it, Inc. in North Bayshore, New York for 2003.

On appeal, the applicant submitted:

9. A letter dated July 16, 2004 from Christine McGibney, the bookkeeper for Glass Surface Systems in Deer Park, New York indicating the applicant has been employed at the company since August of 2002.

Based upon the totality of the evidence submitted, the applicant has overcome the objection raised by director concerning the issue of her continuous residence and continuous physical presence in the United States since February 13, 2001 until the filing date of this application.

An alien applying for TPS 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.