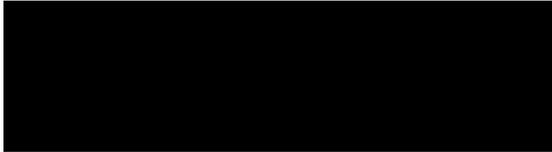


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and Immigration  
Services**

**identifying data deleted to  
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invasion of personal privacy**



*MA*

FILE:



[WAC 05 209 75721]

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

**DEC 06 2006**

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. Wiemann".  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California 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 because the applicant had failed to respond to a request to submit evidence to establish: (1) her eligibility for late registration; (2) her nationality and identity; and (3) that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial application on April 27, 2005.

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 Citizenship and Immigration Services (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).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

In a Notice of Intent to Deny (NOID) dated March 14, 2006, 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 failed to respond; therefore, the director denied the application on June 6, 2006.

On appeal, the applicant asserts that she never received the director's NOID, and that she made a change of address on January 18, 2006;<sup>1</sup> therefore, her failure to provide the documents requested by CIS was through no fault of her own. The applicant further asserts that she is eligible for late registration because she is the spouse of an alien currently eligible to be a TPS registrant. To support her claim, the applicant submits copies of Employment Authorization Cards issued to [REDACTED] under category "A12") and a copy of a marriage certificate indicating that the applicant and [REDACTED] were married in Garden City, Kansas, on August 31, 2003.

The applicant, in this case, was not married to [REDACTED] during the initial registration period as required by 8 C.F.R. § 244.2(f)(2). The applicant has failed to establish that she has met the requirements of 8 C.F.R. § 244.2(f)(2)(iv), or any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the TPS application will be affirmed.

The second issue in this proceeding is whether the applicant has established her nationality and identity.

In a Notice of Intent to Deny dated March 14, 2006, the applicant was requested to submit evidence establishing her nationality and identity. The applicant failed to respond; therefore, the director denied the application on June 6, 2006.

On appeal, the applicant submits a copy of her El Salvadoran birth certificate with English translation, and a copy of an El Salvadoran passport issued to the applicant on September 28, 2005, in Nogales, Arizona.

The applicant has, therefore, overcome this ground for denial.

The third issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the date of filing the TPS application.

As stated above, the applicant was requested on March 14, 2006, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant failed to respond; therefore, the director denied the application on June 6, 2006.

On appeal, the applicant asserts that she has been living in the United States since November 8, 2000, until the present time. She submits a copy of her marriage certificate dated August 31, 2003, and her daughter's State of Kansas birth certificate indicating that her daughter was born on November 9, 2004. She also submits employment documents, a Social Security Statement, and Forms 1040 Income Tax Returns, all pertaining to her spouse, [REDACTED]

The documents pertaining to [REDACTED] cannot be accepted as evidence of the applicant's residence and physical presence in the United States. It is noted that no documentation was furnished by the applicant to establish continuous residence and continuous physical presence in the United States since February 13, 2001, to the date of her marriage on August 31, 2003.

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<sup>1</sup> It is noted, however, that the change of address was made with the United States Postal Service. There is no evidence in CIS records that the applicant had notified CIS of a change of her address, nor did she submit Form ARS-11, Change of Address, as required.

Additionally, the applicant's claim that she has been residing in the United States since November 8, 2000, is not credible. The applicant indicated on the Form I-821, Application for Temporary Protected Status, and on the Form I-765, Application for Employment Authorization, that she entered the United States in February 2003. 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).

Based on the applicant's claimed entry into the United States in February 2003, the applicant, therefore, could not have met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application 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.