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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: DEC 08 2006  
[LIN 06 267 50424]

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*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Nebraska 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 determined that the applicant failed to establish she: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director also found that the applicant failed to provide evidence establishing her nationality and identity. The director, therefore, denied the application.

On appeal, the applicant states that she is providing the requested information. The applicant provides evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

As stated in 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 reveals that the applicant did file an initial application for TPS during the initial registration period on May 4, 2001. That application was denied as abandoned on September 19, 2002, for failure to respond to a request for evidence to establish her identity. 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 denial. The applicant did not file a motion to reopen during the requisite timeframe. The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on November 18, 2002. The director denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 9, 2003. The director denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. The director also determined that the applicant failed to establish her nationality, and that she had continuously resided in the United States since February 13, 2001 and had been continuously physically present in the United States from March 9, 2001 to the date of filing the application. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on May 4, 2001. That initial application was denied by the director on September 19, 2002. 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 a subsequent Form I-821 on November 18, 2002 and again on September 9, 2003. Since the initial application was denied on September 19, 2002, the subsequent applications cannot be considered as re-registrations. Therefore, the applications can only be considered as a late registration.

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 as 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.

*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.

*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 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 granted until September 9, 2007, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on September 9, 2003.

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). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On November 20, 2003, the applicant was provided the opportunity 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 establishing her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the filing date of the application. In addition, the applicant was requested to provide a copy of her birth certificate with English translation. The director found that the applicant did not respond to the notice. The director is correct in finding that the applicant did not respond to this notice, but the applicant had previously provided evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. Furthermore, while the applicant did not present a copy of her birth certificate, she did provide a copy of her passport, which establishes her

nationality and identity. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that she submitted her applications properly and that she has complied with the requirement as stated. The applicant also resubmits evidence in an attempt to establish her continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file her TPS application within the initial registration period. 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 conclusion that the applicant failed to establish her eligibility for late registration will be affirmed.

The second and third issues in this proceeding are 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.

As stated above, the applicant was requested on November 20, 2003 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant failed to respond to this notice.

The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant resubmitted:

1. A copy of a California Identification Card issued on September 22, 2000.
2. Copies of Michigan Department of Community Health Medical Assistance Authorization notices indicating eligibility from March 1, 2001 to March 31, 2001 and from April 1, 2001 to April 30, 2001.
3. A copy of a document indicating medical treatment on March 26, 2001.
4. Copies of a notice from the Michigan Family Independence Agency dated April 2, 2001, a letter from the agency dated April 26, 2001, and a Verification Checklist from the Agency dated May 9, 2001.
5. Copies of State of Michigan Certificates of Live Birth showing the birth of one of the applicant's son on April 8, 2001, and the birth of another son on May 16, 2002.
6. A copy of a Home Health Care Postpartum Emergency Plan dated April 10, 2001
7. Copies of various notices from CIS dated May 18, 2001, December 6, 2002, and September 15, 2003.

The California Identification Card indicates the applicant was present in the United States prior to the qualifying entry date. However, this document does not establish that the applicant was continuously present in the United States since February 13, 2001 and continuously physically present in the United States from March 9, 2001 to the filing date of the TPS application. Of the remaining evidence, the notice from the Michigan Family Independence Agency is dated April 2, 2001, and is the earliest date presented, as evidence of the applicant's presence in the United States. This is subsequent to the dates required to establish entry and continuous residence

in the United States during the qualifying period. Therefore, the evidence is of little or no probative value in establishing her continuous residence since February 13, 2001.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the periods since February 13, 2001. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2 (c). Consequently, the director's decision to deny the application for temporary protected status on this ground will also be affirmed. The applicant has established her continuous physical presence in the United States from March 9, 2001 to the date of filing the TPS application.

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.