



U.S. Citizenship  
and Immigration  
Services

M  
1

centurying data collection to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

[REDACTED]

FILE: [REDACTED]  
[EAC 04 039 51166]

Office: Vermont Service Center

Date: FEB 27 2006

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:

[REDACTED]

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 because the applicant failed to respond to a request for evidence to establish her continuous residence and continuous physical presence in the United States during the requisite periods, and to establish her eligibility for TPS late registration. Therefore, the director determined that the grounds of denial had not been overcome.

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 [EAC 01 164 55355] for TPS during the initial registration period. That application was denied on July 9, 2002, due to abandonment because the applicant failed to appear for her scheduled fingerprint appointment. The applicant filed a motion to reopen on August 7, 2002. The director denied the motion on December 16, 2002.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, on November 17, 2003. The director denied this application on July 13, 2004, because the applicant failed to respond to a request for evidence to establish her continuous residence and continuous physical presence in the United States during the requisite periods, and to establish her eligibility for TPS late registration. Therefore, the director determined that the grounds of denial had not been overcome.

Since the applicant did properly file an application during the initial registration period, the director erred in her explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for TPS late registration, the director's decision did not sufficiently explain the entire basis for denial.

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 17, 2003. Since her initial application was denied on July 9, 2002, and her motion was denied by the director on December 16, 2002, the subsequent application cannot be considered as a re-registration. Therefore, the instant application 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 is eligible for TPS 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 § 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 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 in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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 24, 2004, 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 was also requested to submit evidence establishing her continuous residence in the United States as of February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. In addition, the applicant was requested to submit evidence that she is a national or citizen of El Salvador. The director determined that the record did not contain a response from the application; therefore, the director denied the application on July 13, 2004.

On appeal, counsel asserts the applicant's eligibility for TPS and provides copies of evidence previously submitted in response to the director's March 24, 2004 request. Counsel also submits the following documentation along with the appeal:

1. A copy of the letter from counsel dated April 22, 2004, in response to the director's March 24, 2004 request;
2. A copy of an earnings statement from Building Service Management, Inc. reflecting a period ending date of December 15, 2000, and a Social Security number [REDACTED];
3. A copy of a medical examination report dated July 27, 2001, from the Fairfax County Health Department;
4. A copy of a receipt dated December 21, 2001, from the Fairfax Hospital;
5. A copy of the birth certificate of her daughter born on January 17, 2002;
6. Copies of receipt notices dated April 30, 2001, October 23, 2002, and November 26, 2003, for her applications for employment authorization and temporary protected status;
7. A copy of a Sprint PCS billing statement dated January 19, 2004;

8. A copy of an affidavit dated March 29, 2004, from the applicant's fiancée, [REDACTED] who stated that the applicant arrived the United States on October 27, 1998, and that they have lived together since that time; and,
9. A copy of the applicant's change of address form dated March 29, 2004.

A review of the record of proceedings reveals the counsel had responded to the director's March 24, 2004 request before the director's decision to deny her application on July 14, 2004. As such, it appears the director erred in her conclusion that the applicant did not respond to the request. The evidence submitted by the applicant will be considered in these proceedings.

The first issue in this proceeding is whether the applicant has established her continuous physical presence in the United States during the requisite time period.

The copy of the earnings statement, as detailed in No. 2 above, pre-dates the requisite time periods for continuous residence and continuous physical presence in the United States. It is also noted that the Social Security number on this earnings statement [REDACTED] not the same as that claimed by the applicant on her applications for employment authorization and temporary protected status [REDACTED]. The remaining evidence submitted on appeal post-dates the qualifying time periods for El Salvadoran TPS. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

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

The record of proceedings confirms that the applicant filed her application after the initial registration period had closed. 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. A review of the record of proceedings reflects that 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 decision to deny the application for TPS late registration on this ground will also be affirmed, and the applicant remains ineligible for TPS.

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 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.