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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

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FILE:

[REDACTED]
[EAC 04 247 51788]

Office: VERMONT SERVICE CENTER

DATE: JUN 30 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.

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

Robert P. Wiemann, Chief
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 establish she was eligible for late registration.

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

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 TPS application during the initial registration period under receipt number EAC 01 211 55101. The director denied that application on May 15, 2003, because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On June 12, 2003, the applicant failed an appeal from the denial decision. The Director (now Chief) of the AAO dismissed the appeal on July 13, 2004, finding that the applicant had not submitted sufficient evidence to overcome the grounds for denial of the application.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on August 23, 2004. The director denied this second 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. 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 June 21, 2001. The director denied that initial application on May 15, 2003, and the director of the AAO dismissed an appeal from the denial decision on July 13, 2004. 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 August 23, 2004. Since the initial application was denied on May 15, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this 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 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.

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. As previously

stated, the applicant filed the current Form I-821 with Citizenship and Immigration Services (CIS) on August 23, 2004.

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.

The burden of proof is upon the applicant to establish that 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On September 30, 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 qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States. She also submitted a photocopy of a CIS notice acknowledging receipt of a Form I-130, Immigrant Petition for Relative, Finace(e), or Orphan, filed on the applicant's behalf by her husband, [REDACTED] a lawful permanent resident of the United States, on August 16, 2002.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on January 7, 2005.

On appeal, counsel for the applicant asserts that the applicant qualifies for late initial registration because the Form I-130 filed on the applicant's behalf by her husband was pending before CIS during the initial registration period. Counsel submits another copy of the CIS notice acknowledging receipt of the Form I-130 on August 16, 2002, and evidence relating to the applicant's residence and physical presence in the United States.

Counsel's assertion is not persuasive. An alien cannot qualify for late initial registration based on a pending immigrant visa petition. Counsel has not provided any evidence to establish that the applicant had an application for adjustment of status pending before CIS during the initial registration period. Counsel has not submitted any evidence to establish that the applicant has met 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 application for TPS on this basis will be affirmed.

It is noted that the applicant previously filed a Form I-589, Application for Asylum and For Withholding of Removal, on May 18, 1996. The application was denied on June 24, 1996, and the applicant was referred for an asylum hearing before an Immigration Judge. On December 6, 1996, an Immigration Judge in New York, New York, allowed the applicant to withdraw her asylum application and granted her the privilege of voluntary departure to El Salvador on or before June 6, 1997, with an alternate order of removal if the applicant failed to comply with the grant of voluntary departure. There is no indication in the record that the applicant ever complied with the grant of voluntary departure, and no warrant of removal appears to have been issued in this case.

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.