

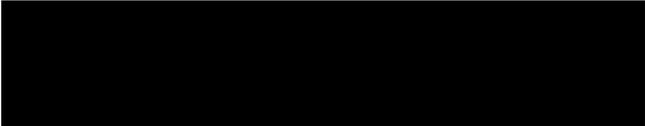


U.S. Citizenship
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Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **SEP 26 2006**

[WAC 05 134 72256]

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".

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 establish that she was eligible for late registration.

On appeal, the applicant submits a statement and copies of evidence previously furnished.

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 parole; 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 February 11, 2005.

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).

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).

On November 7, 2005, 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 since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application, and to also submit the final court disposition of her arrest on February 5, 1999, in Sacramento, California, for shoplifting (listed on the Federal Bureau of Investigation fingerprint results report).

The director noted that the applicant, in response, provided evidence to establish continuous residence and continuous physical presence in the United States, and also provided the records of the Superior Court of California, County of San Francisco, relating to the applicant's arrest. [The court record indicates that the shoplifting charge against the applicant (name used: [REDACTED]) was discharged or dismissed by the District Attorney's Office on February 9, 1999 "PER INTEREST OF JUSTICE."] The director, however, determined

that the applicant had failed to provide any evidence to establish her eligibility for late registration and denied the application on March 6, 2006.

On appeal, the applicant states that she applied for asylum in May 1993, and that she is including a copy of her marriage certificate.

The record of proceeding indicates that on May 13, 1993, the applicant filed Form I-589, Request for Asylum in the United States. On November 29, 2004, the asylum application was denied based on abandonment because the applicant failed to appear for a scheduled interview on November 8, 2004.

The record further shows that on January 5, 2001, the applicant filed Form I-485, Application for Permanent Residence or Adjust Status, based on an approved Form I-130, Petition for Alien Relative, filed on her behalf by her United States citizen spouse. On August 16, 2002, the District Director, San Francisco, California, denied the Form I-485 because the applicant had failed to submit all the requested documentation within the 90 days allotted. The district director also dismissed the applicant's motion to reopen filed on August 29, 2002, because the applicant had failed to meet the applicable requirements in the filing of a motion to reopen or reconsider. 8 C.F.R. § 103.5(a).

The record in this case shows that the applicant had an application for adjustment of status and an application for asylum pending during the initial registration period from March 9, 2001, through September 9, 2002. The adjustment of status application was denied on August 16, 2002, and the asylum application was denied on November 29, 2004. As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following the denial of the application for adjustment of status, immediately following the denial of the asylum application, or immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2)(ii), to file an application for late registration. The TPS application, in this case, was not filed until February 11, 2005, more than 60 days after the termination of the latest qualifying condition (denial of Form I-589).

Accordingly, the applicant has failed to establish that she has met the requirements for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the district director's decision to deny the TPS application will be affirmed.

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.