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[REDACTED]

FILE:

[REDACTED]  
[EAC 04 209 51529]

Office: VERMONT SERVICE CENTER

Date: APR 06 2007

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 that she was eligible for late registration.

On appeal, counsel for the applicant submits additional evidence and resubmits some of the evidence that had previously been entered into the record.

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 on June 26, 2002, the applicant filed an initial TPS application, during the initial registration period, under Citizenship and Immigration Services (CIS) receipt number EAC 02 229 51734. The director denied that application due to abandonment on April 24, 2003, because the applicant failed to respond to a request for additional evidence to establish her eligibility for TPS. The record reflects that both the notice of intent to deny dated March 3, 2003, and the denial decision dated April 24, 2003, were mailed to the applicant's address as provided on her November 1, 2002, applications for renewal of temporary treatment benefits. The record indicates that the applicant did not provide a change of address form, or a new address until she submitted her October 16, 2003, application for extension of temporary treatment benefits. Because the initial application was denied due to abandonment there was no appeal available; however, the applicant could file a motion to reopen within 33 days of the date of the decision. The applicant filed a motion to reopen on January 23, 2004, stating that she had not received the decision. The director dismissed the motion as untimely filed in a decision dated February 26, 2004. On March 20, 2004, the applicant submitted another motion to reopen the denial decision, in which she resubmitted statements from individuals attesting to her residence in the United States. On April 21, 2004, the director also dismissed the second motion to reopen.

The applicant filed this subsequent Form I-821, Application for Temporary Protected Status, on June 24, 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.

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.

Because the applicant's initial Form I-821 was denied on April 24, 2003, this June 24, 2004, application cannot be considered as a re-registration, but can only be considered as an application for late initial 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 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.

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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 validity of the latest extension 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 reveals that the applicant filed her initial TPS application with CIS on June 24, 2004.

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).

The record of proceedings confirms that the applicant filed this application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, 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 late initial registration. 8 C.F.R. § 244.2(g).

On August 20, 2004, the director requested the applicant to submit additional evidence to establish her eligibility for late initial registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, the applicant submitted the CIS receipt notice for her 2004 employment authorization application, and resubmitted two sworn statements from individuals attesting to her residence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on November 18, 2004.

On appeal, counsel submits a statement from the applicant in which she states that she has resided continuously in the United States since 1999. She also states that from 2000 to 2002 she worked under the assumed name of Raquel Duarte. In support of the appeal, counsel submits: the Form I-94, Arrival/Departure Record, indicating that the applicant was admitted to the United States at Atlanta, Georgia, on March 20, 1999, as a B-2, nonimmigrant visitor for pleasure, with an authorized stay until September 19, 1999; a handwritten, non-notarized letter from her current landlord; a handwritten note on the letterhead of the Cambridge Health Alliance, Cambridge, Massachusetts, indicating that the applicant has received medical services there since "05/08/2000;" a letter from Father [REDACTED] Most Holy Redeemer Parish, East Boston, Massachusetts, stating that the applicant has been a member of the parish since February 2000; and, earnings statements from American Building Maintenance Co., New York, New York, dated in 2000 and 2001 that bear no employee name. The applicant also resubmits some of the documentation that had previously been entered into the record.

The applicant submitted evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States, and demonstrated that she had previously applied for TPS during the initial registration period. As discussed above, although the applicant had filed an application during the initial registration period, that application was denied due to abandonment and this application must be considered as an application under the provisions for late initial registration. It is noted that the applicant did not provide a new address until her October 16, 2003, application for extension of temporary treatment benefits, and that the denial decision on the initial TPS application was sent to her last known address. The applicant has not submitted sufficient 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 temporary protected status will 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.