

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



M1

FILE: [REDACTED] Office: California Service Center Date: **APR 11 2007**
[WAC 06 073 70462]

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 California Service Center. Any further inquiry must be made to that office.

Cindy M. Homey
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The applicant is a 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 record reveals that the applicant filed an initial TPS application on April 19, 2001. The application was denied on January 10, 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. The applicant filed a second TPS application on August 2, 2001. That application was denied due to abandonment on March 6, 2002. It is noted that the denial notice was mailed to the applicant's previous mailing address. The applicant's appeal from the January 10, 2003 denial decision was dismissed by the AAO on June 9, 2003. The applicant did not file a motion to reopen or reconsider within the requisite period.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 4, 2003. The Nebraska Service Center Director denied the third application, on January 29, 2004, because it was filed outside of the initial registration period and because the applicant had failed to establish that she was eligible for late initial registration for TPS. A subsequent appeal was dismissed by the Director, AAO, on August 26, 2005.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 12, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 06 073 70462, and indicated that she was filing an initial application to register for TPS. The California Service Center Director categorized the TPS application as a re-registration application, and denied the application on March 24, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel asserts that the applicant is eligible for late initial registration as she is the spouse of a TPS registrant. With the appeal, in an attempt to establish the applicant's eligibility for late initial registration, counsel provides a marriage certificate indicating the applicant's marriage to [REDACTED] on January 22, 1992, and a TPS approval notice for [REDACTED], dated September 15, 2005; the applicant's spouse was first approved for TPS in 2002, and continuously thereafter. To establish the applicant's continuous residence and continuous physical presence in the United States, counsel submits a significant and ample amount of relevant evidence, including hospital bills, utility bills, pay stubs, birth certificates, and the applicant's Indiana Identification Card.

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.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

As noted by the AAO Director in his dismissal decision of August 26, 2005, the applicant's Forms I-821 were properly filed on April 19, 2001 and August 2, 2001, and the director denied those applications on March 6, 2002, and January 10, 2003, respectively. 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 a new filing for TPS benefits.

Since previous applications were denied on January 10, 2003, on March 6, 2002, and on January 29, 2004, respectively, the subsequent application cannot be considered as a re-registration. Also, as noted above, the applicant indicated that she was filing the current application as an initial application to register for TPS. 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 may apply for TPS during the initial registration period, or:

- (f) (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 initial registration period for El Salvadorans was from March 9, 2001 to September 9, 2002. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on December 12, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or 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 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 record of proceedings reveals that the applicant is married to a TPS registrant. As noted above, counsel provided the applicant's marriage certificate confirming that the applicant married [REDACTED] on January 22, 1992, and a TPS approval notice, for [REDACTED] is included in the record, dated September 15, 2005. A review of the record, and Mr. [REDACTED] A-file, indicate that both Mr. [REDACTED] and the applicant consistently specified marriage to each other on their respective TPS applications since their initial submissions in 2001 and 2002, respectively, and also confirmed that the applicant had been in United States during the requisite period. The applicant has submitted sufficient evidence to establish that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(iv).

In addition, the record contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS; the record of proceedings reveals that the Federal Bureau of Investigations (FBI) fingerprint record report conducted on December 20, 2005, shows no derogatory results. The record contains sufficient evidence, in the form of hospital bills, utility bills, pay stubs, birth certificates, and the applicant's Indiana Identification Card, to establish the applicant's 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 date of the filing of her application. Also, the record of proceedings contains a photocopy of the applicant's El Salvador passport, including the biographic page, which establishes her identity and nationality. Therefore, the director's decision will be withdrawn, and the application will be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The application is reopened and the director's denial of the application is withdrawn. The application is approved. The appeal is sustained.