

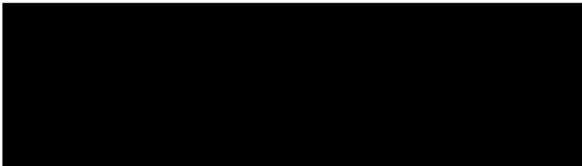
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U.S. Citizenship
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Services

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APR 27 2007



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FILE: [REDACTED]
[EAC 05 221 74299]

OFFICE: Vermont Service Center

DATE:

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: 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.


Robert P. Wieman, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims to be 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 application was denied by the director on April 20, 2006, on the grounds that the applicant failed to establish that she is eligible for late registration and that she meets the qualifying criteria of continuous residence and continuous physical presence in the United States.

On appeal the applicant submits some additional documentation and requests that her case be reviewed.

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 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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. 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.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) 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). *See* 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. *See* 8 C.F.R. § 244.9(b).

The record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status, on September 11, 2002, under Citizenship and Immigration Services (CIS) receipt number EAC 03 018 52256. The director denied that application on November 13, 2003, on the grounds that the applicant failed to establish that she had been continuously resident in the United States since February 13, 2001, and continuously physically present in the United States from March 9, 2001 to the date her application was filed, as required for TPS applicants from El Salvador.¹ The applicant filed an appeal, but it was not filed within the 33-day period specified in the regulations and was therefore rejected by the AAO on April 9, 2004.

The applicant filed the current TPS application on May 9, 2005. It was denied by the director on April 4, 2006, on the grounds that the applicant failed to establish that she is eligible for late registration under the provisions of 8 C.F.R. § 244.2(f)(2), and that she had been continuously resident in the United States since February 13, 2001, and continuously physically present in the United States from March 9, 2001, to the date of filing, as required for

¹ The AAO notes that the applicant's initial TPS application, though it was decided by the director on the merits, did not meet the filing deadline of September 9, 2002. The receipt stamp on the Form I-821 clearly shows that the application was received by the Vermont Service Center on September 11, 2002. An application "shall be regarded as properly filed when so stamped" by the receiving office. 8 C.F.R. § 103.2(a)(7). Thus, the initial application should also have been denied by the director on the ground of late filing.

TPS applicants from El Salvador under 8 C.F.R. § 244.2(c) and (b). The director indicated that the documentation submitted by the applicant did not sufficiently cover the whole period in question, and that affidavits were not, by themselves, persuasive evidence of continuous residence and continuous physical presence over the requisite period.

The applicant filed a timely appeal, requesting that her case be reviewed, and has submitted several items of additional documentation (as well as numerous materials already in the record).

The AAO concurs with the director's denial of the application for failure of the applicant to establish her eligibility for late TPS registration. There is no evidence in the record that the applicant meets any of the eligibility criteria enumerated at 8 C.F.R. § 244.2(f)(2) for her application, filed on May 9, 2005 (more than two and a half years after the close of the initial registration period on September 9, 2002), to qualify for late TPS registration. Accordingly, the director's denial of the application on this ground will be affirmed.

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. *See* 8 C.F.R. § 244.17. In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS.

In support of her contention that she meets the continuous residence and continuous physical presence requirements for El Salvadoran nationals, the applicant has submitted three new documents on appeal – including a certification presented to the applicant by the National Restaurant Association Educational Foundation on March 4, 2003; a diploma presented to the applicant by Boston Market for a course completed on February 17-18, 2005; and a Boston Market store calendar for September 2005 featuring a story about the applicant. None of these items offers further evidence that the applicant, who claims to have entered the United States without inspection in January 2000, has been continuously physically present in the United States since March 9, 2001, and continuously resident in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). In accord with the director's decision, the AAO determines that the evidence of record does not sufficiently document the applicant's continuous residence and physical presence in the United States for the requisite time periods, particularly in the February and March 2001 and the months immediately thereafter. Therefore, the director's denial of the application on those grounds will also 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 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 that burden.

ORDER: The appeal is dismissed.