



U.S. Citizenship  
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FILE: [REDACTED]  
[WAC 05 216 85287]

Office: CALIFORNIA 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:

[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 initial application was denied by the Director, Vermont Service Center. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. 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 record reveals that the applicant filed a TPS application during the initial registration period on December 20, 2001, under Citizenship and Immigration Services (CIS) receipt number EAC 02 075 50866. The Director, Vermont Service Center, denied that application for abandonment on May 12, 2003, because the applicant failed to appear for fingerprinting. However, the record of proceedings reveals that the applicant was subsequently fingerprinted in connection with her subsequent application.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 4, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application 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 for the applicant states that neither she nor the applicant have received the denial notice or a request for additional evidence.

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 term *continuously physically present*, as used 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 term *continuously resided*, as used 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 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 granted until September 9, 2007, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed the current application with CIS on May 4, 2005.

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 appeal, counsel for the applicant states that neither she nor the applicant received the director's denial, or a request for additional evidence. However, no request for additional evidence was sent out because the applicant was denied as abandoned for failing to appear for fingerprinting. Furthermore, the decision was sent to the applicant's address of record. There is nothing in the record to indicate that the notice was returned to CIS by the U.S. Postal Service as undeliverable. Therefore, the applicant's failure to receive the notice is of her own making. In addition, a copy of the denial was not sent to counsel, because counsel was not representing the applicant at that time. It is noted that the Federal Bureau of Investigation processed the applicant's fingerprint on June 2, 2005, and again on April 25, 2006. However, the applicant failed to establish continuous residence and continuous physical presence during the qualifying period. Specifically, the applicant has submitted evidence indicating she was in the United States prior to February 13, 2001, but has failed to establish her qualifying continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. Therefore, the application must be denied for these reasons.

It is also noted that on March 10, 1994, an immigration judge granted the applicant voluntary departure from the United States on or before October 20, 1993, with an alternate order of deportation if the applicant should fail to depart as required. The applicant apparently failed to appear for voluntary departure as scheduled, and a Warrant of Removal/Deportation, Form I-205, was issued on May 1, 1995. The record does not reflect that the applicant appeared at the Arlington, Virginia District Office for her enforced departure on May 25, 1995.

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.