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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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M,



FILE: [REDACTED]  
[EAC 06 350 71011]

Office: VERMONT SERVICE CENTER

Date: **DEC 07 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:



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 Director, Vermont Service Center (VSC), denied the application. The matter 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 seeks 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 she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States.

On appeal, counsel for the applicant asserts that she has been physically present in the United States since before February 13, 2001, and submits additional documentation.

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 as 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 Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 by the Secretary of Homeland Security, with the latest extension valid until March 9, 2009, 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 he or she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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).

The record reflects that the applicant filed a TPS application on September 15, 2006 – over four years after the close of the initial registration period for Salvadorans. The director accepted the application under the late filing provisions in 8 C.F.R. § 244.2(f)(2). In support of her application, the applicant submitted the following photocopied documentation:

- A Form I-862, Notice to Appear, issued on October 10, 1997, indicating that the applicant entered the United States, without inspection, on or about October 2, 1997;
- an order from the Immigration Judge (IJ) in Arlington, Virginia, dated May 27, 1999, administratively closing the applicant's removal proceedings;
- a letter from Washington-Lee High School, indicating that the applicant attended that school from February 4, 1998, to November 28, 2001;

- the birth certificate of her child, born on May 24, 2002, in Fairfax County, Virginia;
- her marriage certificate, indicating she was married in Fairfax, Virginia, on April 8, 2005;
- her birth certificate, with translation; and,
- the identification page of her Salvadoran passport;

On December 14, 2006, the director requested that the applicant provide evidence to establish her eligibility for late registration under 8 C.F.R. § 244.2(f). The director also requested that the applicant submit additional evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant did not respond to the applicant's request.

On February 26, 2007, the director denied the application, determining that the applicant had failed to establish she was eligible for late registration and had failed to establish her *qualifying continuous residence* and continuous physical presence.

On appeal, the applicant submits documentation that establishes that, on September 11, 1995, her father, Jose A. Hernandez, alien registration number 71 515 140, filed a Form I-589, Application for Asylum and for Withholding of Deportation, and listed the applicant as a dependent on the application. On November 12, 2003, the Arlington Asylum Office interviewed the applicant's father in regard to the asylum application. On that day, the applicant's father withdrew his asylum application and the Arlington Asylum Office administratively closed it. The applicant was a dependent applicant for asylum until the date her father's asylum application was withdrawn and administratively closed. Thus, the director erred in finding that the applicant was ineligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii).

The application for TPS cannot be approved, however, because the applicant did not file it within 60 days of the termination of her father's asylum application. As previously discussed, the asylum application was withdrawn and administratively closed on November 12, 2003. At that time, the applicant could have filed an initial TPS application under the late filing provisions of 8 C.F.R. 244.2(f)(ii), as an alien with a pending asylum application. She had sixty days to do so, after the withdrawal and administrative closure of her father's asylum application. The applicant did not file her TPS application until August 26, 2006 – almost three years later. Thus, even though the asylum application was a qualifying condition for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii), the applicant did not file her TPS application within the 60-day period immediately following the termination of the asylum application, as required under 8 C.F.R. § 244.2(g). Accordingly, the TPS application must be denied because it was not filed within the time frame prescribed in 8 C.F.R. § 244.2(g).

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 this burden.

ORDER:        The appeal is dismissed.