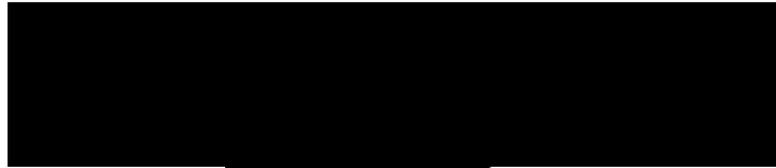




U.S. Citizenship
and Immigration
Services

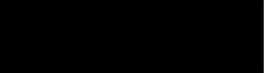
PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



MI

FILE:



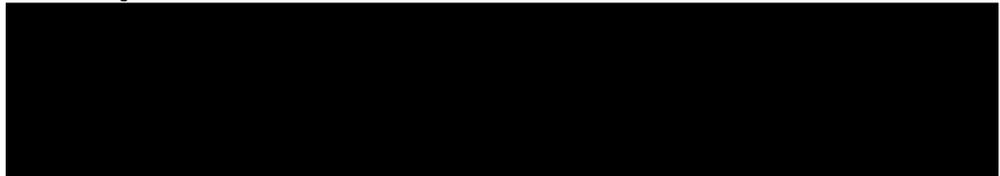
Office: California Service Center

Date: **MAY 02 2007**

[WAC 05 228 73534]

IN RE:

Applicant:



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. Wiemann, Chief
Administrative Appeals Office

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

The applicant is stated 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 late initial TPS application on May 16, 2005, under CIS receipt number WAC 05 228 73534. The director denied the application on July 6, 2006, because the applicant failed to submit evidence to establish eligibility for late initial registration for TPS, her continuous residence in the United States, and her continuous physical presence. The director noted that the applicant failed to respond to a notice of intent to deny, issued on May 5, 2006.

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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El 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. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on May 16, 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 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he/she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and he/she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

With her TPS application the applicant submitted a photocopy of:

- A marriage certificate, issued on December 2, 1998, indicating her marriage to [REDACTED]
- A CIS notice, addressed to [REDACTED] confirming receipt of a I-130 Petition for Alien Relative Relative, Fiancé(e), or Orphan;
- An El Salvador birth certificate with an English translation;
- Nine money transfer receipts, dated in 1999, 2001, 2002, and in 2003;
- A Pre-Natal & RIA test result, dated November 25, 1998;

- An untranslated document in Spanish, dated in 1998;
- A letter from [REDACTED] of Saint Columban Church, dated December 21, 1998, welcoming the applicant to the parish;
- An untranslated and unclear letter in Spanish;
- Two State of California Certificates of live birth, and immunization records, for her children, born on December 21, 1999, and April 1, 2002; and
- Individual Income Tax Returns, with Wage and Tax Statements (W-2), for the years 1998 through 2004, all indicating that the applicant filed as “married filing jointly return, with [REDACTED]

On appeal, the applicant reasserts eligibility for TPS. With her appeal, in an attempt to establish her continuous residence in the United States, and her continuous physical presence, the applicant submits: a photocopy of her El Salvador passport; an Internal Revenue Service identification number notice; four receipts from Healthy Families, dated in 2006; a Certificate of Baptism, dated June 18, 2000; and additional copies of most of the evidence earlier submitted.

The first issue in this proceeding is whether the applicant has met the continuous residence and the continuous physical presence criteria for TPS.

The evidence of record establishes the applicant’s requisite continuous residence and continuous physical presence in the United States. Therefore, the applicant has overcome these grounds for denial. However, this evidence does not mitigate the applicant’s failure to file her Form I-821, Application for Temporary Protected Status, within the initial registration period.

The second issue in this proceeding is whether the applicant has established eligibility for late initial registration.

The applicant indicated on her initial TPS application that she was eligible to file for late initial registration for TPS. She submitted a copy of her marriage certificate indicating that she was married to [REDACTED] a Permanent Resident. The record reveals that the applicant had a pending Form I-130, Petition for Alien Spouse. However, a Form I-130 is not an application for change of status as provided in 8 C.F.R. 244.2(f)(2), and does not render the applicant eligible for late registration. It is noted that the applicant did not provide documentation (and there is no evidence of record) that the applicant filed Form I-485, Application for Adjustment of Status. Furthermore, the record reveals that the Petition for Alien Relative filed on behalf of the applicant by [REDACTED] on March 13, 2001, was denied on December 2, 2005, due to abandonment. Consequently, the director’s decision that the applicant had not established eligibility for late initial registration is affirmed.

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.