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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: MAY 07 2007  
[WAC 05 161 74600]

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.

  
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 on appeal. The appeal will be dismissed.

The applicant is a native and 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 director denied the application after determining that the applicant had failed to respond to a request for evidence.

On appeal, counsel asserts that they did respond to the director's Notice of Intent to Deny (NOID), and that the response was received at the California Service Center on May 11, 2006. He submits a copy of the United States Postal Service, Track & Confirm Search Results, to support his claim. Counsel also resubmits copies of evidence that was furnished in respond to the NOID.

The record indicates that on March 13, 2006, the director issued a NOID requesting that the applicant submit evidence to establish: (1) that she was eligible for late registration; (2) her nationality and identity; and (3) continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. The director noted that the record did not contain the applicant's response; therefore, the director denied the application on May 25, 2006.

The record of proceeding, however, shows that the applicant did respond to the director's request for evidence. The response was received at the California Service Center on May 11, 2006, prior to the director's decision. Therefore, the director's decision will be withdrawn, and a decision will be made based on the evidence of record.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

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 valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial TPS application on March 10, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period 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 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).

In response to the director's NOID dated March 13, 2006, and on appeal, counsel submitted: (1) a copy of an El Salvadoran passport issued to the applicant on February 7, 2006, in Los Angeles, California; (2) school records and school identification cards dated during the school years from 2003 through 2006; (3) immunization record dated from December 2003 through November 2004; (4) affidavits from [REDACTED]

[REDACTED] all claiming that they had personal knowledge that the applicant resided in the United States since December 2000; and (5) documents pertaining to the applicant's mother [REDACTED] including a copy of Form I-797, Notice of Action, dated October 23, 2002, advising Ms. [REDACTED] that she had been granted TPS.

While regulations at 8 C.F.R. § 244.2(f)(2)(iv) allow children of aliens who are TPS-eligible to file applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. According to 8 C.F.R. § 244.2, an alien may in the discretion of the director be granted TPS if the alien establishes that he or she meets all the requirements listed in subparagraphs (a), (b), (c), (d), (e) and subparagraph (f)(1), or (f)(2).

[REDACTED] belonging to the applicant's mother ([REDACTED] was subsequently reviewed. It is noted that Ms. [REDACTED] indicated on her initial TPS application filed on July 18, 2002, and subsequent TPS application filed on August 7, 2003, that [REDACTED] [the applicant] was residing in El Salvador.

Based on the information contained in Ms. [REDACTED] file, it is determined that the applicant was not present in the United States during the period required to establish eligibility. Therefore, she could not have met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. 8 C.F.R. § 244.2(b) and (c). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The reliability of the evidence furnished in an attempt to establish residence and physical presence offered by the applicant, specifically, the affidavits from the three individuals [REDACTED] listed as item (4) above, is suspect.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has failed to establish that she has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application will 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 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.