



U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **MAY 21 2007**

[WAC 05 217 73808]

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 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 because the applicant had failed to respond to a request to submit evidence to establish that she: (1) was eligible for late registration; and (2) had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence.

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 application on May 5, 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).

The director denied the application on May 4, 2006,<sup>1</sup> after determining that the applicant had failed to respond to the Notice of Intent To Deny (NOID) dated February 5, 2006, requesting that the applicant submit evidence to establish that she was eligible for late registration, and that she had continuously resided and had been continuously physically present in the United States during the qualifying period.

On appeal, the applicant asserts that she did send the documents requested, and that she is resubmitting the documents to support her application.

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<sup>1</sup> It is noted that the director's decision was erroneously dated March 4, 2006, rather than May 4, 2006. USCIS database indicates that the denial notice was sent to the applicant on May 4, 2006.

A review of the record indicates that the applicant did respond to the director's request for evidence, and that the response was received by the CSC on April 24, 2006, prior to the director's decision; therefore, the director's finding that the applicant had failed to respond to the NOID will be withdrawn. The applicant resubmitted documents previously furnished and contained in the record, namely: a copy of an El Salvadoran passport issued to the applicant on March 3, 2005 in San Francisco, California; a copy of her El Salvadoran birth certificate; copies of her high school identification cards dated 1999-2000, 2000-2001, and 2002-2003; a copy of her California Identification Card issued on March 17, 2004; and copies of her Employment Authorization Cards issued on December 12, 2000 and May 9, 2003. The applicant, on appeal, submits the I-94 portion of Form I-213, Record of Deportable/Inadmissible Alien, indicating that the applicant entered the United States without inspection near Calexico, California, on October 6, 1997, and she also resubmits evidence previously furnished and contained in the record.

The evidence furnished by the applicant on appeal, in conjunction with other evidence included in the record of proceeding, is sufficient to establish that the applicant has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c).

However, the applicant neither addressed nor submitted any evidence to establish that she was eligible for late registration described in 8 C.F.R. § 244.2(f)(2). A review of the record indicates that on September 26, 1995, the applicant's mother [REDACTED] file number [REDACTED] filed Form I-589, Application for Asylum and for Withholding of Deportation. On April 20, 1999, the applicant was added to Ms. [REDACTED] asylum application as her dependent. On December 22, 2004, the asylum application was administratively closed based on Ms. [REDACTED] failure to appear for a scheduled interview. While 8 C.F.R. § 244.2(g) allows the applicant a 60-day period immediately following the expiration or termination of condition, in this case, after the asylum application was administratively closed, to file a TPS application for late registration described in 8 C.F.R. § 244.2(f)(2)(ii), the applicant did not file her TPS application until May 5, 2005.

Accordingly, the applicant has failed to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the TPS application will be affirmed.

The record indicates that in removal proceedings held on December 29, 2000, the applicant failed to appear; therefore, the Immigration Judge ordered the applicant removed to El Salvador *in absentia*.

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.