

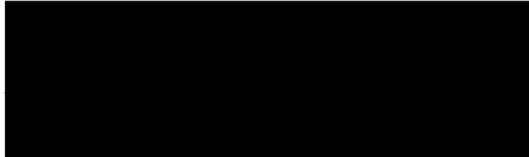


U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: Vermont Service Center

Date:

NOV 05 2007

[EAC 07 001 70692]

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center (VSC), and 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 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 an initial Form I-821, Application for Temporary Protected Status, on May 17, 2001, under CIS receipt number LIN 01 183 52363. The Director, Nebraska Service Center, denied that application on December 5, 2001, because the applicant failed to respond to a July 20, 2001 request for evidence to establish her continuous residence since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing. The director, therefore, considered that application abandoned. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on March 12, 2003, under CIS receipt number LIN 03 128 51706, and indicated that she was filing a new initial TPS application. The Director, Nebraska Service Center, denied that application on December 5, 2001, because the applicant failed to provide evidence to establish her eligibility for late initial registration. The record does not reflect that the applicant filed an appeal of that decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on October 1, 2006, under CIS receipt number EAC 07 001 70692, and indicated that she was filing a new initial TPS application. The Director, Vermont Service Center, denied this application on March 22, 2007, because the applicant failed to establish her eligibility for late initial registration. The applicant filed this appeal.

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 designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

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 initial application with Citizenship and Immigration Services (CIS) on October 1, 2006.

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 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 determined that the applicant had failed to establish she was eligible for late registration and denied the application on March 22, 2007. The applicant filed an appeal from that decision on April 19, 2007.

On appeal, counsel claims that the applicant is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii) because she had a pending application for change of status during the initial registration period due to her Form I-821, Application for Temporary Protected Status, that she filed on May 17, 2001.

A TPS application, however, is not an application for change of status. Moreover, taking counsel's argument to its logical extreme, an alien who had abandoned his initial application could then file a new application within 60 days after the abandonment, abandon the new application, and perpetuate this contempt of the application process indefinitely; thus enjoying the benefits of Temporary Protected Status without ever being approved for TPS and/or successfully completing the application process. The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure that Temporary Protected Status benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations.

Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). The applicant has not submitted any evidence 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 application for TPS will be affirmed.

On appeal, counsel also alleges ineffective assistance of the applicant's prior representative, to the applicant's detriment. However, counsel does not submit any of the required documentation to support an appeal based on ineffective assistance of representative.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that the representative whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of representative's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Furthermore, CIS is not responsible for inaction of the applicant's representative.

In addition, on appeal, counsel states that the applicant did receive the director's July 20, 2001 request for evidence and failed to respond to the director's request. Counsel asserts that this appeal should also be considered as a late motion to reopen/reconsider the Nebraska Service Center Director's December 5, 2001 denial of the initial TPS application. This appeal, however, as indicated on the Form I-290B, relates only to the denial of the current Form I-821, Application for Temporary Protected Status, filed on October 1, 2006, under CIS receipt number EAC 07 001 70692, and cannot be considered as a separate motion to reopen/reconsider a different denial decision. Counsel has not submitted a Notice of Appeal, Form I-290B, for LIN 01 183 52363. The AAO, will therefore, not consider this appeal as a motion to reopen/reconsider the denial, dated December 5, 2001, of the initial TPS application.

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.