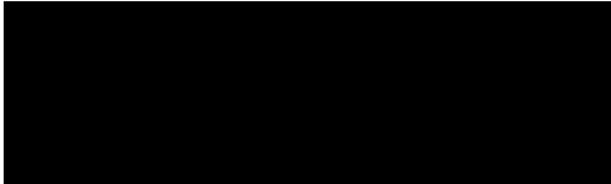




U.S. Citizenship  
and Immigration  
Services

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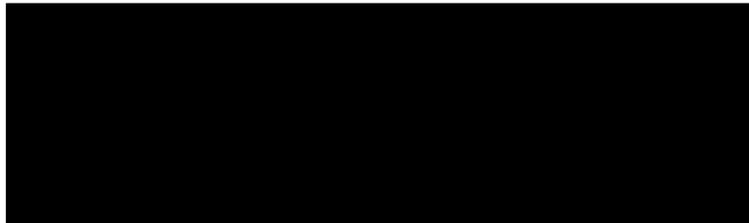
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[EAC 05 225 73979]

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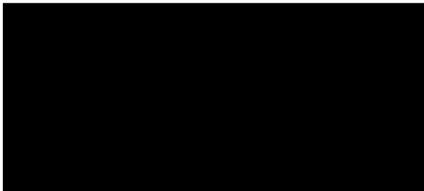
Applicant:



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 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, Vermont 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 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, counsel 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 March 9, 2009, 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 TPS application on May 14, 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 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 first issue in this proceeding is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

The director noted that the record contains a copy of the applicant's passport which was issued in El Salvador on February 14, 2001. The director, therefore, determined that the applicant had failed to establish continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on April 24, 2006.

On appeal, counsel asserts that the director erred in denying the applicant TPS status because the applicant is *prima facie* eligible for TPS. He submits the following documentation:

1. A copy of an El Salvadoran provisional passport issued in Long Island, New York, on February 5, 2001.

2. A copy of Form I-512, Authorization for Parole of an Alien into the United States, issued on February 6, 2001.
3. A copy of Form I-94, Arrival/Departure Record, indicating that upon the applicant's arrival in the United States on March 5, 2001, she was paroled for humanitarian reasons until March 4, 2002.

The record indicates that subsequent to the issuance of a provisional passport in New York on February 1, 2001, the applicant traveled to El Salvador. While in El Salvador, a passport was issued to the applicant on February 14, 2001. The applicant reentered the United States approximately one month later, on March 5, 2001. The applicant's approximate one-month absence from the United States was authorized by the issuance of the Form I-512. Therefore, the director's findings that the applicant had failed to establish continuous residence and continuous physical presence in the United States based on that absence will be withdrawn.

The next issue in this proceeding is whether the applicant is eligible for late registration.

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 record indicates that the applicant filed an initial TPS application on September 13, 2003, under Citizenship and Immigration Services (CIS) receipt number EAC 03 259 53160. The director denied that application on February 19, 2004, because the applicant had failed to respond to a request dated December 3, 2003, to submit evidence to establish that she was eligible for late initial registration. Although the applicant was advised that she could appeal the director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision, the record does not contain evidence that the applicant filed a Form I-290B.

The applicant filed the current TPS application on May 14, 2005, under CIS receipt number EAC 05 225 73979. In a notice of intent to deny dated September 6, 2005, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant responded on October 11, 2005, by marking on the director's letter: "Eligible pursuant to (ii)." She submits copies of seven Employment Authorization Cards issued from May 5, 1996 through May 16, 2002, inclusive, under category C08 (asylum applicant). The director determined that the applicant had failed to establish eligibility for late registration and denied the application on April 24, 2006.

On appeal, counsel asserts that the director erred in denying the applicant TPS status because the applicant is *prima facie* eligible for TPS.

A review of the record indicates that the applicant and [REDACTED] were married in New York on April 26, 1996. On May 10, 1996, the applicant was included in [REDACTED] Form I-589, Application for Asylum and for Withholding of Deportation, as his dependent. [REDACTED] file contains a Judgment of Divorce indicating that the applicant and [REDACTED] were divorced on June 25, 1998. While the divorce would have rendered the applicant ineligible as a beneficiary on [REDACTED] asylum application, it is noted that the asylum application was not administratively closed until August 1, 2002, when [REDACTED] withdrew his asylum application subsequent to the granting of his Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)), and adjustment of status to lawful permanent resident (class of admission Z15), on August 1, 2002.

As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following the withdrawal of her ex-husband's asylum application to file an application for late registration in order to meet the requirements described in 8 C.F.R. § 244.2(f)(2)(ii). However, the TPS application was not filed until May 14, 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 on this ground will be 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.