

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED]
[LIN 04 188 50737]

Office: Nebraska Service Center

Date: **APR 032008**

INRE: Applicant: [REDACTED]

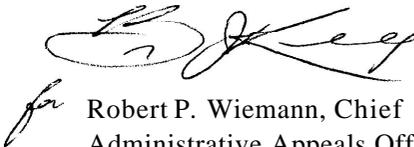
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 applying for 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 failed to establish she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In addition, the application was denied because the applicant failed to provide a copy of her passport or other identity document.

On appeal, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS and submits evidence in support of her claim.

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, 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.

The phrase *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.

The phrase *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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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).

On August 17, 2004, the applicant was requested, through counsel, to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her date of entry into the United States on or before February 13, 2001, her "residence in the United States since February 13, 2001," and her continuous physical presence in the United States from March 9, 2001. The applicant was also requested to submit a copy of a current photo identity document and her birth certificate or passport. In response, counsel submitted a copy of the applicant's Minnesota Identification Card, copies of evidence in support of the applicant's continuous residence and physical presence in the United States; and copies of decisions from the Board of Immigration Appeals (BIA).

On appeal, counsel argues that the applicant is eligible for late TPS registration because she did file her application within the 60-day period following the final decision from the BIA on her asylum application. Counsel argues that the applicant provided ample evidence in support of the circumstances she did not timely file for TPS. Counsel further argues that the applicant was unaware of the final decision of the BIA because of ineffectiveness of her prior counsel. In addition, counsel indicates, on appeal, that she intends to file a separate brief and supporting documentation to the AAO within 30 days. However, as of the date of this decision, no additional evidence has been provided. Therefore, the record must be considered complete.

The first issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing her application for TPS.

The evidence submitted on appeal, coupled with a review of the complete record of proceedings and CIS' systems, reflects that the applicant had entered the United States prior to February 13, 2001. In addition, the applicant has established her continuous residence and continuous physical presence in the United States during the requisite time periods for El Salvadoran TPS. In particular, the applicant applied for and received employment authorization since February 1998, based on her pending application for asylum. The applicant has overcome these grounds for denial. Therefore, the director's decision on these issues will be withdrawn.

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

The record of proceedings confirms that the applicant filed the current TPS application, on June 16, 2004, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period she satisfied at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

A review of the record of proceedings reflects that the applicant's application for asylum, filed on June 30, 1997, was denied by an Immigration Judge on May 24, 1999. The applicant filed an appeal, and the proceeding was administratively closed on June 26, 2001. The Board of Immigration Appeals (BIA) vacated that order on August 9, 2002, and reinstated the Immigration Judge's decision.

While CIS regulations allow aliens with pending asylum applications to apply for TPS after the initial registration period, the regulations require that a late registration be filed within a 60-day period immediately following the denial of the application for asylum and the dismissal of any subsequent appeal. 8 C.F.R. § 244.2(g). In this case, the application for TPS was filed on June 16, 2004, more than 60 days after the BIA's decision on August 9, 2002. Consequently, the director's decision to deny the application for TPS late registration will be affirmed.

It is noted that counsel filed a motion to reopen the proceeding with the BIA on December 5, 2003. The BIA dismissed the motion to reopen on May 21, 2004, because it was untimely filed. The BIA noted in this May 21, 2004 decision that the ineffectiveness of counsel is not an exception to the filing deadline timeframe. The BIA also noted that the Board properly sent its decisions to the applicant's address of record, and that the applicant did not provide a change of address form.

Counsel filed a subsequent motion to reopen with the BIA on June 20, 2004. The BIA dismissed that motion on July 27, 2004, for failure to identify particular errors of fact or law in the prior decision, and did not find that *sua sponte* reopening of the matter was warranted.

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.