



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy**

[REDACTED]

FILE:

[REDACTED]  
[EAC 06 294 84056]

Office: VERMONT SERVICE CENTER

Date: JAN 03 2008

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 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 Chief, Administrative Appeals Office (AAO), 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number EAC 02 289 50771 after the initial registration period had closed. The director denied that application on February 17, 2004. An appeal was considered by the Director, AAO, on March 7, 2005, who remanded the case to the VSC Director. On April 12, 2005, the director denied the application because the applicant had not established that she had continuously resided in the United States since February 13, 2001 or that she had been continuously physically present in this country since March 9, 2001.

The applicant filed a subsequent Form I-821 under receipt number EAC 06 294 84056 on July 21, 2006. The director denied that application on January 23, 2007, after determining had failed to establish she was eligible for late initial registration. The director also determined that the applicant had failed to establish that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001.

On appeal, counsel states:

The Notice of denial of T.P.S. stated that, "the applicant has failed to prove that she qualifies for filing of late initial T.P.S." It is believed that the applicant did not establish *prime facie* eligibility and therefore we are submitting conclusive evidence that the applicant is indeed eligible. Applicant arrived in the U.S.A. in December 30, 2000 and has resided here continually since that date. With affidavits and other documents the applicant will prove that she has established eligibility.

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 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 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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her application with Citizenship and Immigration Services on July 21, 2006.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The applicant's and her husband's record ( [REDACTED] ) reflect that they were married on March 11, 1994, in El Salvador and that her spouse is currently eligible to be and is a TPS recipient.

The applicant has established that she has met the of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2)(iv). Therefore, the application shall not be denied for this reason.

The applicant's spouse indicated on his Form I-821 filed on April 23, 2001, that his spouse and his three children were residing in El Salvador. Therefore, she cannot establish continuous residence in the United States since February 13, 2001, or continuous physical presence in this country since March 9, 2001. Consequently, the director's decision to deny the application will be affirmed these reasons. 8 C.F.R. §§ 244.2 (b) and (c).

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 cited 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.