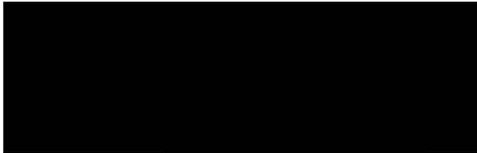




U.S. Citizenship  
and Immigration  
Services

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prevent of unwarranted  
invasion of personal privacy

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FILE:



[EAC 03 244 51721]

Office: Vermont Service Center

Date: JAN 22 2008

INRE:

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 California Service Center. Any further inquiry must be made to that office.

A handwritten signature in cursive script that reads "John H. Vaughan".

for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center (VSC). It is now on appeal before the Administrative Appeals Office (AAO). 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 failed to respond to a request for evidence to establish her continuous residence and continuous physical presence in the United States during the requisite periods, and to establish her eligibility for TPS late registration. Therefore, the director determined that the grounds of denial had not been overcome.

On appeal, the applicant asserts her 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 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 under § 244.3;
- (e) is not ineligible under § 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.

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.

The phrase *brief, casual, and innocent absence*, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

El Salvadoran nationals applying for TPS 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 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 applicant filed her initial Form 1-821, Application for Temporary Protected Status, at the VSC on August 23, 2003 - nearly one year after the close of the initial registration period for El Salvadoran nationals. On October 1, 2003, the applicant was requested to submit evidence to establish 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 to establish 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. On January 23, 2004, the director denied the application because the applicant did not respond to the request for evidence and therefore did not overcome the grounds for denial.

On appeal the applicant states that she did not receive the director's October 1, 2003 request, though it was sent to her last known address, which is also the address provided on her appeal (Form I-290B). The applicant also submits the following photocopied documentation in support of her eligibility for TPS: the birth certificate of her son, [REDACTED], born on April 1, 2003; the applicant's earnings statements from A&R Foods, Inc. dated May 4, 2000 and May 18, 2000; a letter dated February 4, 2004, from [REDACTED], who stated that the applicant had been a patient at the East Somerville Health Center since September 25, 2002; an affidavit dated February 3, 2004, from the applicant's father, [REDACTED], who stated that the applicant had lived with him from January 15, 2000 to July 1, 2001; Permanent Resident Cards [REDACTED] and [REDACTED] and [REDACTED] hand-written generic rental receipts dated September 2, 2001, October 1, 2001, December 1, 2001, January 1, 2002, March 3, 2002, and April 1, 2002; a Travelers Express money order receipt dated February 16, 2004; and two pages from a bank savings book of the Citizens Bank with entries from September 13 to November 29, 2002.

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

The record of proceedings confirms that the applicant filed her initial application for TPS after the initial registration period had closed. The initial registration period for Salvadorans ran from March 9, 2001 to September 9, 2002, while the applicant filed her application on August 23, 2003. 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. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration. Accordingly, the director's determination that the applicant failed to establish her eligibility for late registration will be affirmed.

The second and third issues in this proceeding are 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 from March 9, 2001, to the date of filing her application for TPS.

A review of CIS record systems indicates that on December 10, 1999, the applicant was issued a ten-year multiple entry visa as a nonimmigrant B1/B2 visitor, valid until December 8, 2009. CIS records show that the applicant was admitted to the United States on January 15, 2000, for a six-month stay to July 14, 2000. The

applicant was admitted to the United States again on March 15, 2001, for another six-month stay to September 14, 2001. The applicant departed the United States on July 3, 2001, returned on August 3, 2001, and departed again on December 19, 2001. The applicant was admitted to the United States once again on April 29, 2002, for another six-month stay to October 28, 2002. The applicant evidently overstayed her visa, as CIS records do not indicate any subsequent departures and re-entries.

As the foregoing evidence clearly shows, the applicant does not meet the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador. The applicant's re-admission to the United States on March 15, 2001, after her initial six-month stay in B2 status the previous year, indicates that she did not have an established residence in the United States by February 13, 2001, and was not continuously physically present in the United States as of March 9, 2001. The applicant's subsequent absences from the United States in 2001 and 2002 were consistent with, or mandated by, her nonimmigrant B1/B2 visa, which did not allow the applicant to establish permanent residence or maintain continuous physical presence in the United States.

Thus, the record establishes that the applicant was not continuously physically present in the United States from March 9, 2001, to the date she filed for TPS in August 2003, and has not been continuously resident in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

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 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.