

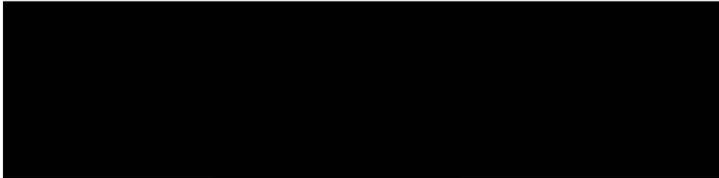
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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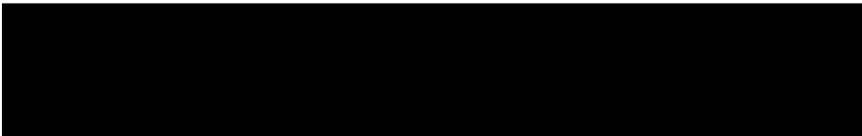


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 25 2008
[EAC 05 141 50632, appeal]
[EAC 05 021 50908]

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:



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, 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 initial registration. The director also found that the applicant had not established that she had continuously resided in the United States since February 13, 2001.

On appeal, counsel states:

Respondent is a native and citizen of El Salvador. She has demonstrated continuous presence in the United States since March 9, 2001. Respondent was also granted voluntary departure on 12/30/03. Respondent is clearly eligible to take advantage of the T.P.S. late registration

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant 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
- (t) (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.P.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 EI 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 EI 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 October 27, 2004.

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.

Counsel argues that because the applicant was also granted voluntary departure on December 30, 2003 "she is clearly eligible to take advantage of late initial registration for TPS. Such a grant would provide eligibility only if it was made during the initial registration period which ended on September 9, 2002.

On January 10, 2005, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to her residence and physical presence in this country. However, she did not submit any evidence to establish that she was eligible for late initial registration.

The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

The record shows that when the applicant filed her initial TPS application on October 27, 2004, she indicated on her Form 1-821, Application for Temporary Protected Status, that she entered the United States on December 17, 2002, subsequent to the eligibility period.

The record contains a Form 1-213, Record of Deportable/Inadmissible Alien, dated December 16, 2002, indicating that the United States Border Patrol apprehended the applicant near Laredo, Texas, after she illegally entered the United States by crossing the Rio Grande River on that day. The applicant must meet the regulatory continuous residence and continuous physical presence requirements. None of the evidence presented by the applicant establishes her continuous residence since February 13, 2001, and her continuous physical presence from March 9, 2001, to December 16, 2002, the actual date she entered the United States. Therefore, she cannot satisfy the continuous residence and continuous physical requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status is affirmed.

It is noted that on December 30, 2003, the applicant was granted the opportunity to voluntarily leave the United States by April 28, 2004, by an immigration judge in Newark, New Jersey. The judge's order further stated that if she failed to depart, the privilege of voluntary departure was withdrawn and the applicant was ordered deported from the United States to El Salvador. The record does not show that she departed this country as ordered. It is further noted that the record contains an outstanding Form 1-205, Warrant of Removal/Deportation, issued by the Acting Field Office Director of the Newark, New Jersey, office dated March 29, 2005.

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.