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**U.S. Citizenship
and Immigration
Services**

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FILE:

[EAC 04 121 51218]

OFFICE: VERMONT SERVICE CENTER

DATE:

JUN 27 2006

IN RE: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 failed to establish she was eligible for late registration. The director also denied the application because the applicant failed to establish continuous physical presence in the United States since March 9, 2001.

On appeal, counsel for the applicant submits a statement. Counsel further stated that a brief and/or additional evidence would be submitted within 90 days. To date, the AAO has not received a brief or any additional evidence. Therefore, the record will be considered complete.

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 of a 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 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence 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 valid until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with Citizenship and Immigration Services (CIS) on February 28, 2004.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. **8 C.F.R. § 244.9(b).**

The first issue in this proceeding is whether the applicant has established continuous physical presence in the United States since March 9, 2001.

The applicant indicated on her Form I-821, Application for Temporary Protected Status, that she entered the United States without inspection on May 30, 1990. She was previously granted TPS under a prior designation of El Salvador for TPS.

On September 19, 1995, [REDACTED] the applicant's husband at that time, added her to his asylum application, filed under CIS registration number [REDACTED] as a dependent. In April 1, 1999, the applicant and [REDACTED] were divorced.

On July 17, 2000, the applicant filed a Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100- (NACARA) with the Vermont Service Center. On November 14, 2002, the applicant appeared for her NACARA interview at the Arlington Asylum Office in Arlington, Virginia. On November 2, 2002, the Director of the Arlington Asylum Office sent a letter to the applicant informing her that she was no longer eligible for derivative status on her asylum application because she and [REDACTED] were divorced. The applicant was further informed that in order to retain her status as a class member of the *American Baptist Church v. Thornburgh* (ABC) settlement agreement, she was required to file a complete asylum application on her own behalf within 90 days of the date of the letter.

On January 29, 2003, [REDACTED] NACARA application was approved. On January 30, 2003, the applicant's asylum application was withdrawn at her request, and her derivative status based as a dependent on Mr. [REDACTED] asylum application was terminated. There is no indication in the record that the applicant filed a complete asylum action on her own behalf within 90 days of that date.

The applicant has applied for, and been granted, employment authorization based on pending asylum and NACARA applications from January 22, 1997 through September 5, 2003, and again as a TPS applicant from April 29, 2004, through September 9, 2006.

The record contains sufficient documentation to establish the applicant's continuous physical presence in the United States throughout the requisite period. Therefore, this ground for denial of the application has been overcome, and the director's finding is withdrawn.

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

The record of proceedings confirms that the applicant filed her current TPS application after the initial registration period had closed. 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 director determined that the applicant had failed to establish she was eligible for late registration and denied the application on October 28, 2004.

On appeal, counsel contends that the director incorrectly denied the application on the ground that the applicant failed to file her late initial application for TPS within 60 days of the termination of her asylum application. Counsel states the applicant was prevented from applying within that 60-day time period because CIS issued her an employment authorization document (EAD) that was valid until September 5, 2003, more than five months after the expiration of the 60-day period.

As previously stated [REDACTED] NACARA application was approved on January 29, 2003. On January 30, 2003, the applicant's asylum application was withdrawn, and her derivative status based as a dependent

on [REDACTED] ; asylum application was terminated on that same date. There is no indication in the record that the applicant filed a complete asylum action on her behalf within 90 days of that date.

In order to qualify for late initial registration based on a pending asylum application, the applicant was required to file her TPS application within 60 days of January 29, 2003, the date the applicant's asylum application was terminated. The applicant did not file her TPS application until February 28, 2004. Therefore, she does not qualify for late initial registration on this basis.

On appeal, counsel contends that the applicant was prevented from filing her TPS application within the requisite 60-day time period because CIS had issued her an employment authorization document (EAD) that was valid until September 5, 2003, more than five months after the expiration of the 60-day period. The fact that the applicant had a valid EAD based on a pending asylum application as of January 29, 2003, did not prevent her from filing her TPS application within the requisite 60-day period. Indeed, the fact that she had a valid EAD would ensure that she continued to enjoy protection from removal and employment authorization until CIS issued a new EAD based on a pending TPS application. Furthermore, it is noted that the applicant didn't apply for TPS until February 28, 2004, five months after the EAD expired. Therefore, counsel's contention cannot be accepted.

The applicant has not submitted any evidence 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 application for TPS will be affirmed.

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.