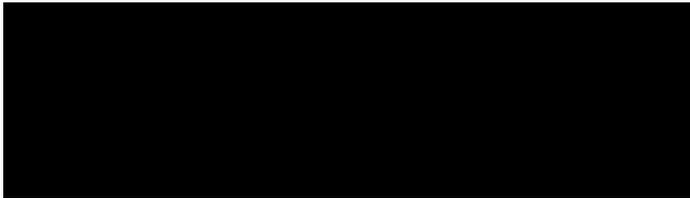




U.S. Citizenship
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Services

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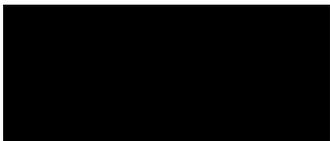
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: SEP 12 2006
[WAC 04 009 51744]

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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 had “failed to register in a timely manner.”

On appeal, counsel asserts that the director never considered the late initial registration issue at all in his denial decision. He contends that the applicant was eligible for late initial registration because her father was a NACARA applicant [Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA))] who included the applicant in his application that was pending from 2001 (during the TPS registration) to 2004, and that in 2003, the applicant had “timely filed for her late initial registration.” Counsel resubmits evidence previously furnished and contained in the record of proceeding.

Applicants for TPS must file their applications during the initial registration period, in this case, for El Salvadorans from March 9, 2001, through September 9, 2002. However, applicants are allowed to file after the initial registration period had closed if they could establish that they are eligible for late initial registration because they fall within any of the provisions described in C.F.R. § 244.2(f)(2).

Because counsel had addressed the issue of eligibility for late registration described in 8 C.F.R. § 244.2(f)(2), this case will not be remanded to the director for further action. Therefore, this case will be adjudicated accordingly.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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 term *brief, casual, and innocent absence* as used 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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States 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 extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial TPS application on September 24, 2003.¹

To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

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).

In a notice of intent to deny dated October 8, 2005, the applicant was requested to submit evidence to establish that she was eligible to register under the late initial registration provisions described in 8 C.F.R. § 244.2(f)(2). She was also requested to submit evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. In response, counsel stated that the applicant's father filed for NACARA in 2001, that the case was granted in 2004, but that in January 2002, the applicant turned 21. He further stated that the applicant "had left to El Salvador for a brief time, and got caught at the border and placed in removal proceedings in November 2002." To establish the applicant's residence and physical presence in the United States, counsel submitted copies of documents relating to the applicant's removal proceedings; a copy of [REDACTED] NACARA application; a copy of DMV temporary driver license issued on December 26, 2004; and bank statements and enrollment, and a billing statement dated in 2005. The director determined that the TPS application was untimely filed and denied the application on January 12, 2006.

On appeal, counsel reiterates that the applicant was eligible for late initial registration because her father was a NACARA applicant who included the applicant in his application that was pending from 2001 (during the TPS registration) to 2004.

The record of proceeding reflects the following:

1. The record contains a copy of a NACARA application, Form I-881, filed [REDACTED] [CIS records indicate that the application was filed on June 1, 2001, and the application was approved on June 7, 2004]. The application listed [REDACTED] residing "with me." No "current address" was listed for [REDACTED]. An addendum to the form listed four more children: Giovannie Bonilla, Rodman [REDACTED] (the applicant). No "current address" was listed for the four latter children; however, it is noted that the four were listed as "TPS pending." It appears that the addendum to this form was prepared after the applicant filed her TPS application on September 24, 2003. The applicant was born on January 2, 1981. Section 101(b)(1) of the Act defines the term "child" to mean an unmarried person under 21 years of age. The applicant turned 21 years of age on January 2, 2002. As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following her 21st birthday to file an application for late registration to meet the requirements described in 8 C.F.R. § 244.2(f)(2)(ii). However, the TPS application was not filed until September 24, 2003. Furthermore, it is noted that the record of proceeding is devoid of the

¹ The director indicated that the TPS application was filed on October 14, 2003; however, this was the date the application fee was processed at the Service Center.

applicant's birth certificate. There is no evidence [REDACTED] is in fact the applicant's father as claimed. Nor was a marriage certificate furnished as evidence that [REDACTED] the applicant's mother were married. Section 101(a)(48)(b) of the Act. Moreover, the applicant indicated on CIS records that her father is [REDACTED]. The Form I- 881 and the copy of Form I-551, Permanent Resident Card, listed the name of [REDACTED].

2. The Record of Deportable/Inadmissible Alien, Form I-213, indicates that on November 16, 2002, the applicant was apprehended by the Border Patrol near Laredo, Texas, subsequent to her entry into the United States without inspection. She stated at that time that she departed from El Salvador on November 9, 2002, and traveled through Guatemala and into Mexico from where she crossed illegally into the United States, near Laredo. She further stated that she was traveling to a city in Utah to seek employment and to reside with a sister-in-law.
3. During the applicant's interview subsequent to her apprehension, a Form I-217, Information for Travel Document or Passport, was prepared on November 17, 2002. The applicant stated on Line 11 of the form [under "Names: locations and dates (years of attendance of foreign schools)"] that she attended "Universidad Francisco Gavidia, San Salvador, El Salvador (2001-2002)." She further stated on Line 12 of the form [under "Names, exact locations and dates (years of attendance of foreign churches. Include date and nature of any religious ceremony which may have been recorded.)"] that she attended "Iglesia Catolica de Concepcion, San Salvador, El Salvador (birth-present)." It is noted, however, that counsel had stated that the applicant "had left to El Salvador for a brief time, and got caught at the border and placed in removal proceedings in November 2002." Counsel, however, did not offer the date of the applicant's claimed departure from the United States, nor did he furnish evidence, or addressed or explained the purposes of the applicant's absence from the United States, and that her absence was brief, casual, and innocent. In fact, there is no evidence in the record that the applicant had previously resided in the United States, prior to her entry on November 16, 2002.
4. In removal proceedings held on March 15, 2004, the Immigration Judge administratively closed removal proceedings based on the filing of a TPS application by the applicant.

As noted above, it appears that the applicant was not present in the United States during the period required to establish continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. Nor did the applicant furnish any evidence to establish residence and physical presence during the requisite period. Therefore, she could not have met the criteria described in 8 C.F.R. § 244.2(b) and (c).

Furthermore, the applicant has failed 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 TPS application will 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 temporary protected status 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.