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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3000
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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: SEP 26 2006
[EAC 04 138 51808]

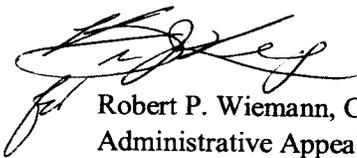
IN RE: Applicant: [REDACTED]

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, and is now before the Administrative Appeals Office (AAO) 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 her eligibility for late initial registration. The director also determined that the applicant had failed to establish her continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel submits a statement and additional evidence.

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.

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.

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 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 reveals that the applicant filed this initial TPS application with Citizenship and Immigration Services (CIS), on April 29, 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 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 on this proceeding is whether the applicant has submitted sufficient evidence to establish her eligibility for late initial registration.

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. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

On May 24, 2004, the applicant was requested to submit evidence establishing her eligibility for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2). The record does not contain a response.

The director determined that the applicant had failed to establish her eligibility for late initial registration and denied the application on July 21, 2004.

On appeal, counsel asserts that the director erred factually and legally and that the applicant is eligible for TPS. In support of the appeal, through counsel, the applicant submits: her El Salvadoran passport issued on September 29, 1997, by the Consulate General, New York, New York; a State of New York Identification Card issued on July 26, 2001; a State of New York Learner Permit issued on December 16, 2002; New York DMV receipts; Internal Revenue Service (IRS) documents, including refund statements dated between 2001 and 2003; earnings statements dated in 1996 and 2003; a savings deposit dated in 2001; money transfer receipts dated in 2001; and, an Employment Authorization document (EAD) issued on August 5, 2002, under Category C9.

The record reveals that the applicant was the beneficiary of a Form I-130, Petition for Alien Relative, filed by her husband, a United States Citizen, on September 18, 2000. In addition, the Form I-485, Application to Register Permanent Resident or Adjust Status, was filed on the applicant's behalf on March 19, 2001. The application for change of status was pending during the initial registration period and, therefore, the applicant met one of the criteria for eligibility for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2)(ii).

The record reflects that the Form I-130 was denied due to abandonment on October 5, 2001. The Form I-485, also was denied on March 7, 2003. As noted above, if the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g). The Form I-485 was denied on March 7, 2003, but the applicant did not file her application for TPS until April 5, 2004, well beyond the 60 days as required under 8 C.F.R. § 244.2(g). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The second and third issues in this proceeding are whether the applicant established her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 13, 2001.

After the applicant failed to respond to the request for additional evidence, the director determined that the applicant had failed to establish her continuous residence and continuous physical presence during the requisite periods and denied the application on July 21, 2004.

On appeal, through counsel, the applicant submits the above listed documentation. In combination the other evidence of record, the applicant has submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Therefore, the applicant has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the applicant has overcome this finding of the director. Therefore, this portion of the denial will be withdrawn.

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.