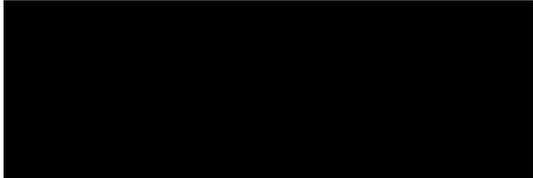




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



N11

FILE: [REDACTED]
[WAC 06 105 70086]

OFFICE: CALIFORNIA SERVICE CENTER DATE: **JAN 24 2007**

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: Self-represented

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.


for 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 claims to be 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 record reveals that the applicant filed an initial TPS application on September 18, 2002, after the initial registration period had closed, under Citizenship and Immigration Services (CIS) receipt number WAC 03 039 52876. The director denied that application based on abandonment on April 10, 2003, because the applicant had failed to respond to a request dated February 19, 2003, to submit: (1) evidence to establish nationality; and (2) 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. The applicant did not file a motion to reopen within 30 days from the date of the denial. It is noted, at this point, that the director failed to address the fact that the applicant filed her TPS application after the initial registration period for El Salvadorans had closed, and there is no evidence in the record that the applicant was eligible for late registration as described in 8 C.F.R. § 244.2(f)(2). The applicant filed Form I-821 application for TPS on May 10, 2005, under CIS receipt number WAC 05 222 78999, and indicated that she was re-registering for TPS. The director denied the re-registration application on June 20, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. Although the applicant was advised that she could appeal the director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision, the record does not contain evidence that the applicant filed a Form I-290B.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 13, 2006, and indicated that this is her "first application to register for Temporary Protected Status (TPS)." The director treated the application as a re-registration application and determined that because the applicant's initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS; therefore, the director denied the application on February 21, 2006.

On appeal, the applicant asserts that she is eligible for late registration because she presently "has been served with a notice to appear and has a matter pending before EOIR in San Francisco." She submits a copy of Form I-862, Notice to Appear, issued on December 8, 2005, in Laguna Niguel, California.

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.

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 the current application with CIS on January 13, 2006.

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 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 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's assertion that she is eligible for late registration because she has been served with a Notice to Appear (Form I-862) is not persuasive. The Form I-862 was issued on December 8, 2005, after the initial registration period for El Salvadorans had closed. There is no evidence in the record that, **during the initial registration period**, an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal was pending or subject to further review or appeal, or that she has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Furthermore, Form I-862, alone, does not convey eligibility for TPS as an application for relief from removal.

Accordingly, 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 record contains the Federal Bureau of Investigation fingerprint results report indicating that on January 21, 1988, the applicant was arrested and charged with (1) burglary, 459 PC; (2) false identification to peace officer, 148(9) PC; (3) petty theft, 484/490(5) PC; and (4) petty theft, 484/490(5) PC. The record also contains the final disposition of this arrest indicating that on April 1, 1988, in the Municipal Court of California, San Mateo County, Case No. [REDACTED], the applicant was convicted of one count of petty theft, 484/490(5) PC, a misdemeanor offense. As the applicant was convicted of only one misdemeanor offense, she is not ineligible for TPS based on this conviction, pursuant to section 244(c)(2)(B)(i) of the Act.

However, it is also noted that documents contained in the record of proceeding are insufficient to establish that the applicant met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Additionally, although the record contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for this reason.

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.