

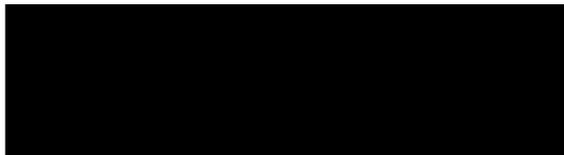
identifying data deleted to  
prevent clearly warranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

NY



FILE:



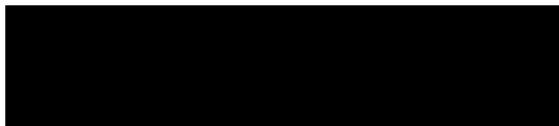
OFFICE: CALIFORNIA SERVICE CENTER

DATE: NOV 15 2007

[WAC 05 216 79656]  
[SRC 03 027 55314]

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:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center (CSC), 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 record reveals that the applicant filed an initial application for TPS under Citizenship and Immigration Services (CIS) receipt number SRC 03 027 55314. The Director, Texas Service Center (TSC), denied the initial application on September 30, 2004, after determining that the applicant had filed her initial application on October 5, 2002, and that she had failed to establish that she was eligible for late registration. [It is noted that the TSC director, in her Notice of Intent to Deny dated March 8, 2004, indicated that the applicant filed her initial application on November 5, 2002.]

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 4, 2005 (WAC 05 216 79656). The applicant failed to indicate whether she was re-registering for TPS, or whether it was her "first application to register for Temporary Protected Status (TPS)." The CSC 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 CSC director denied the application on August 19, 2005.

A review of the record indicates that the TSC director's decision in the denial of the initial TPS application was in error. Specifically, the file contains a copy of Form I-171C, Notice of Action, dated November 5, 2002, advising the applicant that her initial TPS application was received at the Texas Service Center on September 6, 2002, during the initial registration period for El Salvadorans. However, a remand of this case to the director based on the erroneous denial of the initial application would serve no practical purpose as it would not overcome the director's decision, because the record as presently constituted contains insufficient evidence to establish that the applicant has met the criteria for continuous residence and continuous physical presence in the United States during the requisite period.

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 parole; or
  - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

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. 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 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).

The record of proceeding reveals the following:

1. A Notice to Appear, Form I-862, was issued in Kingsville, Texas, on December 22, 2000, based on the applicant's entry into the United States without inspection near Brownsville, Texas, on or about December 18, 2000. In removal proceedings held on March 12, 2001, in Houston, Texas, the

applicant failed to appear; therefore, the Immigration Judge determined that the applicant had abandoned any and all claims for relief from removal and ordered the applicant removed to El Salvador *in absentia*. A Warrant of Removal/Deportation, Form I-205, was issued on September 15, 2001.

2. The record contains a computer-generated enrollment record and a signed statement from the Assistant Principal of Riviera Elementary indicating that the applicant attended that school from February 14, 2002 until the end of the school year, May 23, 2002. Also submitted is a copy of a Certificate of Completion awarded to the applicant for completing the Sixth Grade at Riviera Elementary School dated May 21, 2002.

The following documents, also contained in the record of proceeding, reveal discrepancies and cannot be accepted as credible evidence to establish continuous residence and continuous physical presence during the qualifying period:

3. A copy of an inquiry form dated March 15, 2004, signed by the Assistant Manager of Tradewinds Apartments, 1245 Palm Bay Road, Palm Bay, Florida, indicating that [REDACTED] (the applicant's mother) and [REDACTED] (the applicant) moved in at that apartment on January 11, 2000, and moved out on October 31, 2001. A review of [REDACTED]'s file [REDACTED] reveals that during that time period, she claimed she was residing at 3418 Hartwood Circle, Hoover, Alabama.
4. A copy of a Certificate of Immunization issued by the State of Alabama showing dates of immunization prior to the applicant's entry into the United States. The date of the certificate, February 5, 2001, was altered.
5. A copy of a "Return to School Authorization" allegedly issued by Foot Health Center in West Melbourne, Florida, based on a follow-up appointment at the clinic. The date of the authorization, January 29, 2002, was altered.
6. While the Assistant Principal of Riviera Elementary School (No. 2 above) indicated that the applicant attended that school from February 14, 2002 until May 23, 2002, and a Certificate of Completion was issued for completion of "Sixth Grade" at that elementary school, the applicant submitted a copy of a school identification card allegedly issued by the Simmons Middle School for the school year 2001-2002 as a six grader.
7. A computer-generated "Demographics" showing an entry date at an unnamed school on August 7, 2003, and two copies of certificates issued by Stone Middle School for the school year 2002-2003. The applicant has not submitted evidence that she attended this school during the periods claimed.
8. A copy of Howard County Schools Progress Report for the period from January 13, 2004 through March 5, 2004. The date of the progress report, March 5, 2001, was altered.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancy in the evidence she provided. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The applicant has failed to establish that she has 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). Therefore, the initial TPS application and the re-registration application will be denied.

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.