



U.S. Citizenship  
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 05 2005**  
[WAC 03 101 53428]

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.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
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 matter will be remanded for further consideration and action.

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 file her application "in a timely manner."

On appeal, the applicant submits a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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.

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. 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 the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on February 10, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 director determined that the applicant had failed to file her TPS application "in a timely manner," and denied the application on February 27, 2004.

On appeal, the applicant states that she saw an announcement on television by an attorney who stated that the last day of the initial registration period for Salvadorans was November 30, 2002. She further states that she understood from the television announcement that she was required to file an initial Form I-821, Application for Temporary Protected Status, and a Form I-821 application seeking re-registration at the same time. She explains that the applications were rejected and returned to her "many times." She states, "I think that the officer who received my initial application for TPS did not know that people who were under nonimmigrant status during the initial period of registration for TPS were eligible to file a late registration for I-821."

The record indicates that the applicant initially submitted the current Form I-821 on November 12, 2002. The application was rejected and returned to the applicant for resubmission with a Form I-765, Application for Employment Authorization. The applicant resubmitted the application twice with a statement indicating that she was not applying for employment authorization. The Form I-821 was not properly filed until February 20, 2003, more than five months after the expiration of the initial registration period for Salvadorans.

The record indicates that the applicant's mother filed a Form I-589, Application for Asylum and for Withholding of Deportation, on her behalf on January 21, 1999, requesting that her daughter be included in her asylum

application as an ABC (*The American Baptist Church v. Thornburgh Settlement Agreement*) class member. According to a CIS computer printout contained in the record of proceeding, the applicant was issued an Employment Authorization Card valid from March 16, 1999 to March 15, 2000, indicating that she had an asylum application pending before CIS. The applicant was subsequently issued a second Employment Authorization Card valid from January 4, 2002 to January 3, 2003, also based on an underlying pending asylum application. Since the applicant had an asylum application pending before CIS during the initial registration period, she qualifies for late registration pursuant to 8 C.F.R. 244.2(f)(2)(ii). Therefore, the director's decision will be withdrawn.

However, the application may not be approved at this time. The applicant has not submitted any evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001; this is especially relevant as the applicant failed to file for asylum renewals from March 15, 2000 to July 4, 2002, a period during which she would be required to establish eligibility for TPS. Accordingly, the matter will be remanded for issuance of a new decision consistent with the foregoing.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The matter is remanded for further action consistent with the above and entry of a new decision.