

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



MI

FILE: [REDACTED]  
[LIN 04 020 51991]

Office: NEBRASKA SERVICE CENTER

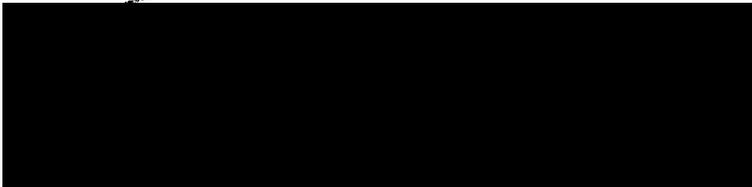
Date:

**AUG 12 2005**

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, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Nebraska 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 failed to establish she was eligible for late registration. The director also found that the applicant had failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file a prior Form I-821, Application for Temporary Protected Status, during the initial registration period. The director of the Vermont Service Center denied that application on July 2, 2003, after determining that the applicant had abandoned her application by failing to respond to a request for evidence dated November 20, 2002.

The applicant filed the current Form I-821 on October 27, 2003. The director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. The director also denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant's initial Form I-821 was properly filed on May 29, 2001. As stated previously, the director of the Vermont Service Center denied that application on July 2, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, is normally considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

Since the initial application was denied on July 2, 2003, the current application cannot be considered as a re-registration. Therefore, this application can only be considered as a late initial registration.

On appeal, the applicant submits a brief 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 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 § 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.

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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed the current TPS application with Citizenship and Immigration Services (CIS) on October 27, 2003.

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 in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, 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 she 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).

On January 22, 2004, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence to establish her identity and nationality and evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, provided evidence to establish her identity and nationality and documentation relating to her residence and physical presence in the United States. She also submitted the following relevant evidence:

1. a photocopy of a Form I-797C notice addressed to [REDACTED] acknowledging receipt of the applicant's initial Form I-821 at the Vermont Service Center on May 29, 2001;

2. a photocopy of correspondence dated October 4, 2002, from the California Service Center that was addressed to the applicant at [REDACTED] Los Angeles, CA 90020," instructing her to contact the Vermont Service Center regarding the error in her name as it appeared on her first Employment Authorization Card; and,
3. a photocopy of a letter to the California Service Center from the applicant dated August 21, 2001, informing CIS of her updated California address and the error in her name as it appeared on her first Employment Authorization Card.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on March 3, 2004.

On appeal, former counsel for the applicant states that the applicant moved from Virginia to California after she filed the prior Form I-821 with the Vermont Service Center on May 29, 2001. Counsel explains that the applicant sent a letter to the California Service Center on August 20, 2001, informing them of her new address and also informing them that her name was erroneously reflected as [REDACTED] instead of [REDACTED] on her Employment Authorization Card. Counsel states, "[t]he INS received this letter and was aware of her new address." Counsel points out that the California Service Center sent correspondence to the applicant at her updated address on October 4, 2002, instructing her to contact the Vermont Service Center regarding the error in her name as it appeared on the Employment Authorization Card. The letter also informed the applicant that she should file a new Form I-765 with the California Service Center if she needed an extension of her employment authorization.

Additionally, counsel states that the Vermont Service Center subsequently sent a letter dated December 2, 2002, to the applicant at her California address, [REDACTED] Los Angeles, California 90020," instructing her to file a new Form I-765 with the California Service Center if she needed an extension of her employment authorization.

Counsel states:

However, despite having notice that she had lived in California since August 2001, on November 20, 2002, the INS sent a request for further evidence on her TPS application to Ms. [REDACTED] Virginia address. . . Ms. [REDACTED] never received it and had no knowledge of the letter because she was no longer living in Virginia and the mail was not forwarded to her. The INS sent a second letter to Ms. [REDACTED] at her Virginia address on July 2, 2003, informing her that it was denying her TPS application because she did not respond to the November 20, 2003, RFE. Ms. [REDACTED] never received this second letter because it was sent to the wrong address. Ms. [REDACTED] had no notice of the November 20, 2002, RFE until the final decision denying TPS re-registration [sic] on January 22, 2004.

Counsel contends that CIS incorrectly denied the applicant's initial TPS application for lack of prosecution because she failed to respond to the November 20, 2002, request for evidence. Counsel cites 8 C.F.R. § 244.9(c) as follows:

*Failure to timely respond.* Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

The applicant's former counsel submits the following relevant evidence:

1. a photocopy of the Vermont Service Center Request for Evidence dated November 20, 2002, bearing a stamp that reads "NO RESPONSE;"
2. a photocopy of a letter from the Vermont Service Center dated December 20, 2002, reflecting the applicant's updated California address; and,
3. a photocopy of the Notice of Denial dated July 2, 2003, addressed to the applicant at [REDACTED] Arlington, VA 22204."

The Request for Evidence issued by the Vermont Service Center on November 20, 2002, and the denial of the applicant's prior TPS application dated July 2, 2003, were both mailed to the applicant's former address in Virginia. The record confirms counsel's contention that both the Vermont Service Center and the California Service Center were aware of the applicant's updated address in California, since both service centers sent correspondence to the applicant at her California address prior to the issuance of the Notice of Decision dated July 2, 2003.

Further, pursuant to 8 C.F.R. § 244.9(c), a failure to respond to a request for evidence will be excused if the request for information was not mailed to the applicant's most recent address provided to CIS. In this case, CIS was clearly aware of the applicant's updated address prior to the issuance of the request for evidence dated November 20, 2002. Nevertheless, both the request for evidence and the notice of denial were mailed to the applicant at her former Virginia address rather than her updated California address. Additionally, since the initial application was not denied until July 2, 2003, the applicant did not have an opportunity to file another TPS application during the initial registration period for Salvadorans.

In view of the foregoing, it is concluded that the applicant's prior Form I-821 was improperly denied due to abandonment, and the current application will be accepted as a timely initial application for TPS. Consequently, the applicant has overcome this ground for denial of the application.

The second issue in this proceeding is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant previously submitted a pay statement from [REDACTED], in Kodiak, Alaska, dated March 9, 2001, for the pay period ending March 3, 2001, and a State of Virginia Identification Card issued on March 22, 2000.

As stated above, the applicant was requested on January 22, 2004, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. a photocopy of the applicant's Form I-765 listing her address as [REDACTED] Arlington, VA 22204," that was approved by the Vermont Service Center on June 25, 2001 and a photocopy of a Form I-797C notice acknowledging receipt of the applicant's Form I-821 at the Vermont Service Center on May 29, 2001 and a Fingerprint Notification Receipt dated June 14, 2001, and a fingerprint appointment notice dated November 15, 2001;
2. photocopies of [REDACTED], money transfer receipts dated April 17, 2000; August 17, 2000 and August 19, 2000, all reflecting the applicant's mailing address as [REDACTED] Los Angeles, CA 90004;"
3. a photocopy of a letter dated July 22, 2003, from [REDACTED], Public Health Nurse, stating that the applicant was seen at the Kodiak Public Health Center in Kodiak, Alaska, as a patient on December 11, 2000, January 31, 2001, and February 21, 2001;
4. a letter to the applicant from her daughter in El Salvador dated September 12, 2000;
5. a photocopy of an Employment Authorization Card issued to [REDACTED] that was valid from June 25, 2001 to September 9, 2002, along with a photocopy of the applicant's letter to the California Service Center dated August 21, 2001;
6. a photocopy of a Western Union money transfer receipt dated May 19, 2001, reflecting the applicant's address as [REDACTED] VA 22204;"
7. an Immunization Record from the Clinica MSR. [REDACTED] in Los Angeles, California, reflecting an immunization received by the applicant in Los Angeles, California, on "10/01/01;"
8. a photocopy of a birth certificate reflecting the birth of a child to the applicant at Queen of Angels - Hollywood Presbyterian Medical Center in Tenet, California, on May 1, 2003; and,
9. photocopies of a United States Postal Service Customer Receipt dated May 26, 2001, and a certified mail receipt reflecting mail received at the Vermont Service Center on May 25, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application.

On appeal, former counsel for the applicant submits evidence previously submitted in response to the Notice of Intent to Deny dated January 22, 2004.

The applicant's Virginia Identification Card was issued on March 22, 2000. The applicant stated in her letter dated August 21, 2001, that she had moved from Virginia to California, but she has submitted money transfer receipts indicating her presence in California in April and August of 2000 (No. 2 above), when she was supposedly living in Virginia. Furthermore, Ms. [REDACTED] states in her letter dated July 22, 2003, (No. 3 above) that the applicant was seen in her clinic in Kodiak, Alaska, as a patient on December 11, 2000, January 31, 2001, and February 21, 2001, but, as previously stated, the applicant was supposedly living in Virginia prior to the filing of her TPS application. The applicant has not provided any explanation for these discrepancies. 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 visa petition. Further, it is incumbent on 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Additionally, the applicant has not provided any evidence to establish her qualifying continuous residence and continuous physical presence in the United States in 2002 other than the CIS correspondence that counsel asserts the applicant never received. Furthermore, the applicant has submitted only her child's birth certificate to establish her qualifying continuous residence and continuous physical presence in the United States in 2003. The applicant has not submitted sufficient evidence to establish continuous residence and continuous physical presence in the United States throughout the requisite periods. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

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.