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FILE: [REDACTED]  
[LIN 04 015 51507]

Office: Nebraska Service Center

Date: **AUG 15 2005**

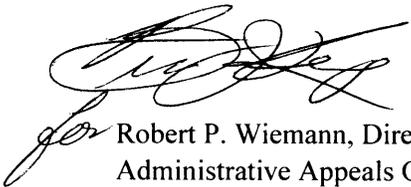
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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, 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 her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant provides additional evidence in support of her eligibility for TPS.

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.

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 by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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 record reveals that the applicant filed her initial application [LIN 04 014 52035] for TPS on September 11, 2002, after the initial registration period had closed. The director denied that application on May 30, 2003, because the applicant failed to establish her eligibility for TPS late registration. The applicant did not file an appeal during the requisite timeframe.

The applicant filed a second Form I-821, Application for Temporary Protected Status, on October 21, 2003. The director denied this application [LIN 04 015 51507] on February 12, 2004, because the applicant had failed to establish her eligibility for filing under the provisions of late registration. The director also found that the applicant had failed to establish her continuous residence and continuous physical presence in the United States during the requisite periods. This application is now before the AAO.

On November 24, 2003, 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 continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. The director concluded that the record did not contain a response from the applicant; therefore, the director denied the application on February 12, 2004.

On appeal, the applicant provides the following documentation: copies of a replacement money order dated August 26, 2003, from the United States Postal Service; copies of her birth certificate along with an English translation; copies of her El Salvadoran personal identification card; copies of receipt notices from the Service dated September 11, 2002, October 19, 2002, November 12, 2002, and October 21, 2003; a copy of her DBI Tenprinter Applicant Information Worksheet dated December 13, 2002; a copy of a rejection letter from the Service dated September 22, 2003; a copy of a letter dated December 12, 2003, from Ms. [REDACTED] Records Secretary for Faribault High School in Faribault, Minnesota, indicating that her son, [REDACTED] began his studies on March 14, 2001; a copy of her marriage certificate; a copy of the director's November 24, 2003 notice; a copy of a Patient Receipt dated August 21, 2002; copies of Western Union money transfer receipts dated November 13, 1999 and March 16, 2001; a copy of a U.S. Postal Service Loss Mail report dated August 13, 2003; a copy of an envelope postmarked June 8, 2001, addressed to the applicant in the United States; a copy of a Express Mail receipt dated September 9, 1999; a copy of a dependent/beneficiary report dated July 22, 2003; a copy of her son's high school grade report covering the period from March 5, 2001 to June 6, 2001; and a copy of her medical and prescription plan card.

A review of the record of proceedings reflects that the director erred in stating that the applicant did not respond to his November 24, 2003 request. The record contains a response from the applicant received by the NSC on December 29, 2003, which was subsequently forwarded to the AAO and received on June 23, 2004. The applicant submitted the same evidence on appeal.

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

A review of the record of proceedings reflects that the applicant has provided sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the requisite time periods.

The second 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. The initial registration period for 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, 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 he or 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). A review of the record of proceedings reflects that the applicant has not submitted any evidence 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 application for TPS late registration will be affirmed.

An alien applying for TPS 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.