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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[LIN 04 188 50666]

Office: Nebraska Service Center

Date: DEC 08 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.

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 applying for 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 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 who is a national of a foreign state designated by the Attorney General 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 section 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 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.

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 initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS), on June 14, 2004.

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).

On August 17, 2004, the applicant was requested to submit evidence to establish 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 establishing her date of entry into the United States as of February 13, 2001, her "residence in the United States since February 13, 2001", and her continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted some evidence in an attempt to establish her continuous residence and continuous physical presence in the United States. However, the applicant did not submit any evidence establishing her eligibility for TPS late registration. The director determined that the applicant had failed to establish her eligibility for TPS late registration. The director also determined that the applicant had failed to submit sufficient evidence to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001. Therefore, the director denied

the application on October 1, 2004. The director noted in the decision to deny that the applicant did not submit enough evidence to establish residency or continuous physical presence for the years 2002, 2003, and 2004.

On appeal, the applicant states that she had previously submitted an application under NACARA; however, her NACARA application was submitted in error. The applicant further states that she also previously applied under the SAW II program and that this application was ultimately denied. In addition, the applicant submits along with her appeal a copy of the Form I-694, Notice of Appeal of Decision under Section 210 or 245A of the Immigration and Nationality Act, regarding the denial of her application for temporary residence, and copies of evidence in support of her residence and physical presence in the United States.

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

The director noted in his decision to deny that the applicant did not provide sufficient evidence of her residency and presence in the United States for the years 2002 to 2004. A review of the evidence submitted by the applicant, on appeal, establishes that the applicant has resided in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001. The director's decision to deny the application based on this issue is withdrawn.

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. 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.

A review of the record of proceedings reflects that the applicant's Form I-700, Application for Temporary Resident Status, was denied on July 25, 1991, and a subsequent appeal on that decision was dismissed by the director of the AAO on November 5, 2002. While the applicant's pending application for temporary alien status rendered her eligible for late registration, CIS regulations also require a late registration to be filed within a 60-day period immediately following the expiration or termination of conditions that made the applicant eligible for late registration. 8 C.F.R. § 244.2(g). In this case, the applicant's 60-day period for late registration actually expired on January 10, 2003. The applicant filed her TPS application with the director on June 14, 2004.

The applicant did not file her application during the initial registration period or during the allotted 60-day late registration period described in 8 C.F.R. § 244.2(g). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

It is also noted that although the applicant states, on appeal, that she had submitted an application under NACARA, there is no evidence in the record of proceedings of such filing before the Service. It is also noted that the record contains a copy of a Form I-94, Departure Card, as evidence of lawful permanent residence status, valid until February 27, 2003. However, the record does not substantiate that the applicant was ever

granted such status. Furthermore, the record indicates that the applicant attempted to apply for a replacement of a permanent resident card; however, that application was denied on September 9, 2002, because her application for temporary residence (Form I-700) was denied.

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.