

Identifying data deleted to  
protect clearly unwarrented  
interest of individual

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

MI

[Redacted]

FILE: [Redacted]  
[EAC 03 231 55323]

Office: VERMONT SERVICE CENTER

Date: JUN 27 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:

[Redacted]

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, Vermont 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 this application because the applicant's previous TPS application had been denied.

On April 28, 2004, counsel for the applicant filed an appeal and provides documentation previously submitted.

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 filed an initial application for TPS on August 16, 2002, which was during the initial registration period.

In a notice of intent to deny, dated February 6, 2003, the applicant was requested to submit evidence to show that she is a citizen or national of "Nicaragua." The applicant was given 30 days to respond to the notice of intent to deny. The record contains no response from the applicant.

In a notice of intent to deny dated May 15, 2003, the Service requested that the applicant disregard its previous request to submit evidence to show that she is a citizen of Nicaragua and provide evidence to show that she is a citizen or national of El Salvador instead. The Service advised the applicant that such evidence may include: a copy of the biographical pages of her passport; a copy of her birth certificate issued by the appropriate civil authority showing registration, date and place of birth, and parent's names; or, a copy of both sides of her National Identification Card. The applicant was given 30 days to provide such evidence. The record contains no response from the applicant within that 30-day period.

On July 28, 2003, the applicant filed a TPS application for re-registration.

On March 3, 2004, the acting director denied the TPS application filed by the applicant on August 16, 2002 because:

On May 15, 2003, you were notified of the Service's intent to deny the Application for Temporary Protected Status, Form I-821, you filed on August 16, 2003. The basis for the intent was for you to provide proof that you are a national of El Salvador.

You were granted an opportunity to submit any evidence you thought would overcome the grounds of denial.

As of January 23, 2004, the Service has not received a response from you. As we stated in our intent to deny letter, this Bureau will make a final decision on your application in 30 days, thirty days has passed.

It is noted that the director erred in stating that the initial application was filed on August 16, 2003. The initial TPS application was filed on August 16, 2002.

On March 26, 2004, the director denied the TPS application filed on July 28, 2003, because:

On July 28, 2003, you filed a TPS re-registration by submitting an Application for Temporary Protected Status (Form I-821) and an Application for Employment Authorization (Form I-765), as required. In order for this re-registration to be approved, your previously filed Application for Temporary Protected Status (Form I-821) must have been approved. Since your previous Application for Temporary Protected Status (Form I-821) was denied, the present Application for Temporary Protected Status (Form I-821) cannot be approved and is hereby denied.

On April 1, 2004, the applicant, in response to the notice of intent to deny dated May 15, 2003, provided: a copy of the aforementioned notice of intent to deny dated February 6, 2003; a copy of the aforementioned denial dated March 3, 2004; a copy of her Employment Authorization Card; copies of pages of her El Salvadorian passport; and, a letter which states, in pertinent part, that:

I am writing this letter as a response to a couple of letters I have previously received. The first letter asked me to prove that I am a citizen or national of Nicaragua, I have no way to do such thing because I am Salvadorian. I am also responding to a letter that has notified me of a denial to my petition for TPS. I have been given the opportunity to appeal to this decision, which is the reason why I am writing this letter. I apply for TPS because a public notary [REDACTED] assured me that I had to do so. I have been living in the U.S. for almost seven years, and when I applied for TPS, I already had a work permit, which I acquired, [sic] through asylum. ... I don't know if I have to appeal to renew my work permit again under the Temporary Protected Status if I already have a work permit that is valid and that was granted six years ago. I went to the INS office at Roslyn, Virginia and the office representative told me that I don't need a work permit through T.P.S. [sic], I am not sure of what is it I need to do and so forth I am asking for another 30 days to appeal to this decision, or until I receive and advise or answer from you. ....

The record reveals that the applicant did file an initial application for TPS on August 16, 2002, during the initial registration period. The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on July 28, 2003. That application dated August 16, 2002, was denied on March 3, 2004, because the applicant failed to provide evidence that she is a national of El Salvador. The applicant was advised that she could file an appeal within 30 days from the date of the denial. The applicant did not file an appeal.

The director denied this second application on March 26, 2004, because the applicant was not eligible to file for re-registration as her initial application had been denied and 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.

Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on August 16, 2002. That initial application was denied by the director on March 3, 2004. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be 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.

The applicant filed a subsequent Form I-821 on July 28, 2003. Since the initial application was denied on March 3, 2004, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 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 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.

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 March 9, 2005, upon the applicant's re-registration during the requisite

time period. The record reveals that the applicant filed the instant application with Citizenship and Immigration Services (CIS), on July 28, 2003, after the end of the initial registration period.

The issue to be addressed in this proceeding is whether the applicant has established her eligibility for late registration.

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, in the decision dated March 26, 2004, determined that as the applicant's previous application was denied, the re-registration application could not be approved. The director denied the application.

On appeal, counsel argues that the Service erred in denying the applicant TPS because she could not prove she is from Nicaragua. Counsel states that the applicant is from El Salvador and provides a copy of the biographical page of the applicant's El Salvadorian passport. Counsel resubmits the above-mentioned documentation and letter from the applicant submitted on April 1, 2004. It is noted that the application was not denied because the applicant failed to prove she was a citizen of Nicaragua. It was denied because the applicant was not eligible to file for re-registration, because her initial application had been denied due to her failure to respond to a request to show that she was a citizen of El Salvador.

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 temporary protected status will be affirmed.

Beyond the decision of the director, the record contains insufficient evidence to establish that the applicant has been continuously residing and has been continuously physically present in the United States during the requisite periods. The record does contain pay statements, however these statements do not cover a continuous period during the required timeframes. Therefore, the application must also be denied for these reasons.

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.