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

MI

FILE:

[REDACTED]
[WAC 04 133 51915]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **SEP 16 2005**

IN RE:

Applicant: [REDACTED]

APPLICATION:

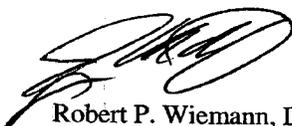
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


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 appeal will be dismissed.

The applicant is a native and citizen of Mexico 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's country of nationality is not a designated foreign state for temporary protected status.

On appeal, counsel submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by 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 El 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 from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

The record shows that the applicant filed her TPS application on April 6, 2004. To support her claim of eligibility for late initial registration, the applicant submitted with her application: (1) her birth certificate indicating that she was born in Mexico on April 8, 1962, to a Mexican mother and a Mexican father; (2) her divorce decree indicating that her marriage to [REDACTED] was dissolved on December 1, 2000; (3) her marriage certificate indicating that she married [REDACTED] a native and citizen of El Salvador, on December 24, 2003; and (4) a copy of [REDACTED] Form I-589, Application for Asylum and for Withholding of Deportation, as evidence that [REDACTED] was eligible to be a TPS registrant.

The director noted that the applicant is a national of Mexico, and that her country of nationality is not a designated foreign state for temporary protected status. Therefore, the director denied the application on August 3, 2004.

On appeal, counsel asserts that the applicant is eligible for TPS because she is the spouse of [REDACTED] who is an approved TPS applicant. She submits a copy of Form I-797, Notice of Action, as evidence that [REDACTED] was granted TPS on July 19, 2004. Counsel further asserts that, "we have already been successful in obtaining TPS status for those who are not of Salvadoran nationality, but are the spouses and/or children of TPS applicant's. This has been recognized by the Service [USCIS] and before the EOIR." Counsel, however, failed to submit any evidence to support this claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the Court of Appeals, in *Sussex Engineering, Ltd. v. Montgomery*, 825 F.2d 1084 (6th Cir. 1987), held that it is absurd to suggest that the Service must treat acknowledged errors as binding precedent. The Service is not required to approve applications or petitions where eligibility has not been demonstrated. See *Matter of M-*, 4 I&N Dec. 532 (A.G. 1952; BIA 1952).

In this case, the applicant has not demonstrated that she is statutorily eligible for TPS. The applicant is required to meet the requirements that she is a national of a designated foreign state, pursuant to section 244(c) of the Act, in order to be granted TPS as the spouse of a TPS recipient. As a national of Mexico, the applicant cannot meet these requirements. Therefore, this finding of the director will be affirmed.

The record of proceeding contains the Federal Bureau of Investigation (FBI) fingerprint results report indicating that the applicant was arrested on June 1, 2001, in Salinas, California, for petty theft. While the FBI report shows that the applicant was convicted of this offense, the actual final court disposition is not included in the record of proceeding. CIS must address this arrest and/or conviction in any future decisions or proceedings.

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.