



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

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FILE:

Office: Vermont Service Center

Date: JUL 20 2006

[consolidated with  
[relates to  
[EAC 03 259 52705]

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, Chief  
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 the application because the applicant failed to establish her continuous residence in the United States during the requisite period, and to establish her eligibility for TPS late registration.

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 two initial applications [EAC 02 152 50439 and EAC 02 221 51538] for TPS during the initial registration period. Those applications were denied on June 12, 2003 and November 8, 2002, respectively, due to abandonment because the applicant failed to appear for her scheduled fingerprint appointments. Since the applications were denied due to abandonment there was no appeal available; however, the applicant could have filed a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframes.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, on September 15, 2003. The director denied this application [EAC 03 259 52705] on September 8, 2004, because the applicant failed to establish her eligibility for TPS late registration. The director also denied the application because the applicant failed to establish her qualifying continuous residence in the United States during the requisite period.

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

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 September 15, 2003. Since her initial applications were denied June 12, 2003 and November 8, 2002, the subsequent application cannot be considered as a re-registration. Therefore, the instant 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 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.

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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2007, 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).

On March 24, 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 establishing her continuous residence in the United States "as of February 13, 2001." In response, the applicant submitted some evidence relating to her continuous residence in the United States; however, she did not submit any evidence to establish her eligibility for late registration. The director denied the application on September 8, 2004, because the applicant had failed to establish she was eligible for TPS late registration, and to establish her qualifying continuous residence in the United States.

On appeal, the applicant states that she submitted the wrong evidence with her initial TPS application. The applicant, along with her appeal, also submits copies of her removal proceedings that reflect she was arrested by the United States Border Patrol on May 19, 2000, near Laredo, Texas, under file [REDACTED]

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. 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 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 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.

The second issue in this proceeding is whether the applicant has established her continuous in the United States during the requisite time period.

The copies of her removal proceedings documentation reflect that the applicant was apprehended by the United States Border Patrol on May 19, 2000, near Laredo, Texas. The evidence also reflects that the applicant was

released on her own recognizance on June 6, 2000, and commanded to report at [REDACTED] on the first Wednesday of every third month. The evidence submitted pre-dates the requisite time period for continuous residence in the United States by over eight months. Additionally, the applicant has not provided any evidence that she has reported to the New York City office as required. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous residence requirements described in 8 C.F.R. §§ 244.2(c). Consequently, the director's decision to deny the application for temporary protected status on this ground will also be affirmed.

It is also noted that the record contains a Form I-130 filed on her behalf under section 203(a)(2)(A) of the Act. This petition was denied on June 27, 2002.

In addition, it is noted that the applicant was ordered removed from the United States on October 27, 2000, by an immigration judge at New York City, New York, under file number [REDACTED].

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.