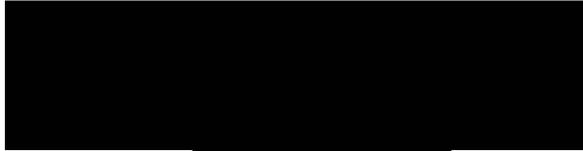


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U.S. Citizenship  
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Services

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FILE:

Office: NEBRASKA SERVICE CENTER

Date: **MAR 21 2008**

[LIN 03 261 50186]

[LIN 04 125 52832, motion]

INRE:

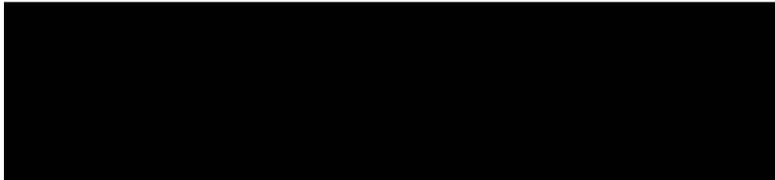
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
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 determined that the applicant failed to establish she: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant's appeal should be sustained. The applicant also submits evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States.

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 as 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.

*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.

*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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until March 9, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on September 2, 2003. The applicant filed her initial TPS application on October 24, 2002. That application was denied on May 14, 2003, because the applicant failed to establish her continuous residence and continuous physical presence in the United States during the qualifying period and her eligibility to file for late initial registration. There is nothing in the record to indicate that the applicant appealed the director's decision.

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 Citizenship and Immigration Services (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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding 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 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). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On November 14, 2003, the applicant was provided the opportunity 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 since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the applicant's appeal should be sustained because she has met her burden of establishing her eligibility for late TPS registration. According to counsel, the applicant filed an asylum application which was subsequently withdrawn. Counsel contends that the applicant's husband filed a Form I-130, Petition for Alien Relative, which was denied but subsequently appealed. Counsel states that the applicant appealed this denial which was pending when the applicant initially applied for TPS. As discussed by counsel, the record indicates that the applicant provided evidence that she had a pending Form I-130. However, a Form I-130 is not an application for change of status as provided in 8 C.F.R. 244.2(f)(2), and does not render the applicant eligible for late registration. The applicant also submits evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States. However, this does not mitigate the applicant's failure to file her TPS application within the initial registration period. 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.

The second and third issues in this proceeding are whether the applicant has established her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on November 14, 2003, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In his decision, the director listed the evidence furnished by the applicant in response to the request for additional evidence. The director concluded that the applicant had established continuous residence and continuous physical presence in 2001, and 2002, but failed to establish her qualifying residence and physical presence in the United States for 2003 and denied the application.

On appeal, the applicant submits:

1. Copies of tax documents for the years 2001, 2002 and 2003.
2. Copies of pay stubs **from** dated January 3, 2003 through **Decem** 2003, January 2, 2003 March 26, 2004; copies of account summaries from for April 1, 2003 through June 30, 2003, July 1, 2003, through September 3 , ; and, a pay stub **from** dated November 5, 2004.
3. Copies of earnings statements dated July 5, 2003 through December 20, 2003, January 3, 2004 through March 27, 2004, and December 23, 2004.
4. Copies of monthly statements from SBC dated January 4, 2003 through December 4, 2003, January 4, 2004 through March 4, 2004; copies of a late notice from Cingular dated March 16, 2004; water and sewer bills from Columbus & Central Ohio Systems, Inc, with due dates of February 15, 2003 through December 16, 2003, January 6, 2004 through May 27, 2004, and September 15, 2004; copies of

- account summaries from Time-Warner Cable dated January 2, 2003 through June 27, 2003; copies of Dish Network billing statements dated May 26, 2003 through December 11, 2003, January 11, 2004, February 11, 2004, March 11, 2004, and April 11, 2004; and, a letter from Dish Network dated January 1, 2004.
5. Copies of Bank One monthly statements for the periods from December 18, 2002 through January 20, 2004, and a letter from Bank One dated June 27, 2003.
  6. Copies of Premier Bank account summaries with due dates of February 17, 2003, through December 19, 2003; January 17, 2004; and, February 17, 2004.
  7. Copies of monthly account statements from [REDACTED] with due dates of January 6, 2003 through December 7, 2003; January 6, 2004, February 6, 2004, and March 8, 2004; copies of TranSouth account statements with due dates of January 19, 2003 through December 19, 2003; January 19, 2004, February 19, 2004, and March 19, 2004; and a letter from TranSouth dated January 30, 2004.
  8. Copies of [REDACTED] renewal addendum and a garage rental addendum dated March 1, 2004 and rent checks dated January 2, 2004, February 28, 2004, and April 1, 2004; and monthly rental statements from [REDACTED] dated February 1, 2001.
  9. A copy of a letter from [REDACTED] dated January 5, 2004, a copy of a billing statement from Mount Caramel Health System dated April 27, 2004, and a copy of a statement from Greater Cols. Otolaryngology dated October 11, 2004.
  10. Copies of a statement from AT&T with a due date of July 18, 2004, a monthly statement from Fifth Third Bank for the period from May 4, 2004 through June 11, 2004, an account statement from American Electric Power with a due date of September 29, 2004, and a monthly statement from Citi Financial, Inc. with a due date of October 1, 2004.
  11. A copy of the applicant's marriage license issued on March 12, 2001, the applicant's passport, C 1 visa, and an El Salvadoran identification card.

The applicant also submitted evidence that was already part of the record. These documents submitted on appeal establish that the applicant continuously resided in the United States in 2003 and 2004. Consequently, the applicant has submitted sufficient evidence to establish that she has met the criteria described in 8 C.F.R. § § 244.2(b) and (c). Therefore, this basis for the director's decision will be withdrawn.

The applicant, however, 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.

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.