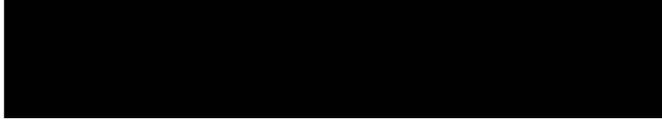




**U.S. Citizenship,  
and Immigration  
Services**

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**invasion of personal privacy**

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FILE: [REDACTED]  
[SRC 01 18566008]  
[WAC 05 18975352]

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 2 B2008**

INRE: 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:



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 Director, Texas Service Center (TSC), denied the initial application. The director, California Service Center, (CSC) denied a subsequent application for re-registration which is now before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, AAO, and the appeal will be sustained.

The applicant is a native and citizen of El Salvador who seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director denied the re-registration application because the applicant had not previously been granted TPS.

On appeal, counsel for the applicant submits additional documentation.

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.

The phrase continuously physically present, as defined in 8 CF.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 CF.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 Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 by the Secretary of Homeland Security, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the four provisions described in 8 CF.R. § 244.2(f)(2) above.

The burden of proof is on 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 CF.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 record reflects that the applicant filed a TPS application on April 16, 2001 - during the initial registration period for Salvadorans. The applicant indicated on her application that she had entered the United States, without inspection, on November 10, 1998. On August 2, 2001, the director mailed the applicant a fingerprint notice to the address listed on her application. The notice was returned to the director as Undeliverable and the applicant did not appear for fingerprinting.

On October 1, 2002, the applicant filed an application for re-registration, listing a new address.

On May 6, 2003, the director denied the initial application as abandoned due to the applicant's failure to appear for fingerprinting. Since the application was denied due to abandonment there was no appeal available. The applicant was informed that she could file a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion.

During subsequent re-registration periods, the applicant filed applications that were accepted under the late filing provisions of 8 C.F.R. 244.2. In support of these applications, the applicant submitted additional evidence relating to her qualifying continuous residence and continuous physical presence.

On February 14, 2005, the applicant filed the current re-registration application. On August 31, 2005, the director denied the application, determining that the applicant had not been previously granted TPS and was, therefore, ineligible for tps re-registration.

On appeal, the applicant submits additional documentation.

The record contains the following documentation:

- The applicant's Salvadoran national identity document;
- The birth certificate of the applicant's child, issued on December 8, 2000, showing the child was born on October 25, 2000, Harris County, Texas;
- A Medicaid identification notice from the Texas Department of Human Services addressed to the applicant and dated December 17, 2000, and valid through January 31, 2001;
- A Medicaid identification notice from the Texas Department of Human Services addressed to the applicant and dated January 20, 2001, and valid through February 28, 2001; and,
- Documents relating to proceedings before an Immigration Judge in 1998.

Although the applicant does not appear to have filed a Form AR-11, Alien's Change of Address Card, she did indicate her new address on her October 1, 2002, re-registration application. If the applicant has satisfied the other requirements for TPS, the first application can be reopened *sua sponte*, in accordance with 8 C.F.R. 103.5(a)(5). The applicant has satisfied the requirements for establishing her continuous residence and continuance physical presence from the required dates in 2001 to the date of filing of her initial application. The applicant's national identity document establishes her identity and her Salvadoran nationality. The record contains results from a recent fingerprint investigation of the applicant conducted by the Federal Bureau of Investigation (FBI) on April 24, 2006, indicating no criminal record that would bar the applicant from TPS eligibility. Therefore, the initial application is reopened and approved.

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 met this burden.

**ORDER:** The appeal is sustained. The initial application is reopened, *sua sponte*, and the application is approved.