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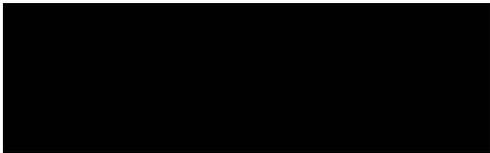
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 09 2009
[WAC 05 236 51888, appeal]

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 Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Vermont Service Center (VSC). A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office on appeal. The applicant's appeal will be sustained and the case remanded to the director.

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 applicant filed an initial Form I-821, Application for Temporary Protected Status, on April 15, 2001, under receipt number EAC 01 169 51438 which was denied by the VSC Director on September 4, 2003, because the applicant had abandoned her application by failing to provide evidence of continuous residence in the United States since February 13, 2001 and continuous physical presence in this country since March 9, 2001.

The applicant filed a subsequent Form I-821 on April 5, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

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.

As stated above, the director denied the initial application after determining that the applicant had abandoned her application by failing to provide evidence of continuous residence and continuous physical presence during the required period. However, prior to the VSC Director's September 4, 2003 determination, the applicant submitted a substantial amount of evidence that was not considered in the decision.

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.

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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her application with Citizenship and Immigration Services on April 15, 2001.

A list of evidence submitted by the applicant to show that she satisfies continuous residence and continuous requirements is shown below:

1. A copy of the applicant's State of California identification issued on January 21, 1997.

2. A copy of the applicant's receipt from Citywide Furniture and Bedding Warehouse Liquidators in Central Islip, New York, dated August 29, 1998.
3. A copy of her daughter's New York State birth certificate showing her birth on October 10, 1998.
4. A copy of the applicant's receipt from the Suffolk County Department of Health Services Patient Care Services dated March 30, 1999.
5. A copy of the applicant's receipt from Stony Brook Surgical Associates, P.C. in Stony Brook, New York, dated July 7, 1999.
6. Copies of envelopes addressed to the applicant in Central Islip, New York, postmarked December 14, 1998 and June 22, 2001.
7. A copy of the applicant's New York State Resident Income Tax Return for 2001.
8. A copy of the applicant's IRS Form 1040A, U.S. Individual Income Tax Return, for 2001.
9. Copies of the applicant's pay stubs from Plastic Solutions Inc. in Stony Brook, New York, issued to her in 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, and 2005.
10. Copies of the applicant's IRS Form W-2, Wage and Tax Statement(s), from Plastic Solutions, Inc. in Central Islip, New York, for 1998, 1999, 2001, 2002, 2003, 2004,
11. A copy of the applicant's Republic of El Salvador passport issued to her on May 16, 2002, in Long Island, New York.
12. A copy of the applicant's rent receipt dated January 8, 2003, for a property in Central Islip, New York.
13. A copy of a letter from Brentwood Family Health Center in Brentwood, New York, indicating she was a patient at the Health Center from July 2001 through July 2005.

The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS. However, the record does not contain current fingerprints for the applicant. Therefore, the case will be remanded to the director to send notice to the applicant to appear at a scheduled date to be fingerprinted.

An alien applying for temporary protected status has the burden of proving that he or she meets all requirements and is eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The applicant's appeal will be sustained and the case remanded for further action.