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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  
Services

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[REDACTED]

FILE:

[REDACTED]  
[EAC 08 048 72102]

Office: VERMONT SERVICE CENTER

Date: **JAN 12 2010**

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

On appeal, counsel for the applicant states that the applicant applied for TPS during the initial registration period and has lived in the United States during the qualifying dates and is therefore eligible for TPS. The applicant also submits evidence in an effort to establish continuous residence and continuous physical presence during the qualifying period.

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 an initial application for TPS during the initial registration period on March 27, 2001. That application was denied as abandoned on September 22, 2004, for failure to respond to a request for evidence to establish her eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for 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 timeframe. The applicant's subsequent TPS re-registration was denied because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The applicant did not appeal that decision.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, on October 24, 2007. The director denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. In addition, the director determined that the applicant failed to establish continuous physical presence in the United States since March 9, 2001. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, since the applicant did properly file an application during the initial registration period, the director did not fully explain the basis for denial.

The applicant's initial Form I-821 was properly filed on March 27, 2001. That initial application was denied by the director on September 22, 2004. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

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 this Form I-821 on October 24, 2007. Since the initial application was denied on September 22, 2004, the subsequent application cannot be considered as a re-registration. Therefore, this 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 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 September 10, 2010, upon the applicant's re-registration during the requisite period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 United States Citizenship and Immigration Services (USCIS). 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 October 23, 2008, 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 nationality and identity, 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 director also requested the applicant to submit a statement requesting withdrawal of her application if she did not wish to pursue TPS because USCIS records indicate she had obtained lawful permanent resident status. The applicant, in response, provided evidence to establish her nationality and identity and submitted 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 states that the applicant submitted a TPS application during the initial registration period and that if the initial application had been granted the applicant would not be required to establish that she had any other relief available during the initial registration period. The applicant appears to argue that the applicant's initial TPS application establishes her eligibility for late initial registration. However, TPS does not render nonimmigrant status to the applicant. Consequently, an application submitted during the initial registration period does not qualify as a change of status application and does not render the applicant eligible for subsequent late registration. Moreover, taking counsel's argument to its logical extreme, an alien who had abandoned her initial application could then file a new application within 60 days after the abandonment, abandon the new application, and perpetuate this contempt of the application process indefinitely; thus enjoying the benefits of Temporary Protected Status without ever being approved for TPS and/or successfully completing the application process. However, the provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure that Temporary Protected Status benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations.

The applicant submits evidence in an attempt to establish her continuous residence and physical presence in the United States during the qualifying period. However, the applicant has not submitted sufficient 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 conclusion that the applicant failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on October 23, 2008 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. Copies of a W-2, Wage and Tax Statement, for the year 1998; and pay stubs dated December 23, 1999, November 14, 2000, January 25, 2002, and March 22, 2002.
2. Copies of a letter from [REDACTED] an Atlanta Medical Center Confirmation of Birth and a State of Georgia Certificate of Live Birth indicating the applicant's son was born on June 29, 2001; a letter from the Social Security Administration dated September 25, 2001; a Georgia Driver's License issued on November 20, 2001; and a copy of a Salvadoran birth certificate, with English translation.

The applicant also submitted evidence that was already part of the record.

The director concluded that the applicant had failed to establish her qualifying physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant submits:

3. Copies of a employment verification statement from [REDACTED] a Social Security Statement indicating earnings in 2001, 2002, and 2003; and a Georgia Driver's Licenses issued on November 18, 2003 and August 29, 2005.
4. Copies of a Certificate of Award dated May 26, 2006; a State Farm Insurance Auto Renewal document for the period beginning April 11, 2008; a court order dated April 24, 2007; Apartment Rental Contracts for periods beginning on February 23, 2007, March 29, 2008 and April 1, 2009; a Social Security Card; a Billing Statement from Atlanta Medical Center with an admission date of April 2, 2007; and 2007 and 2008 tax documents.
5. Copy of a money transfer receipt dated November 10, 2004; a Dental Chart – Progress Notes indicating dental work performed beginning on June 19, 2007; and a 2007-2008 Grade Level Communication Report.

[REDACTED] stated that the applicant was a patient at [REDACTED] from June 6, 2000 to June 22, 2001. However, this statement has little evidentiary weight or probative value. These statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. [REDACTED] stated that the applicant has been a Production Packer at EPI Breads since January 19, 2004. This statement also has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of her

employment. It is further noted that [REDACTED] can only attest to the applicant's presence in the United States since January 19, 2004. The Social Security Statement indicates the applicant's earnings in 2001, 2002 and 2003. However, this document cannot establish the applicant's continuous residence from February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. The remaining evidence is all dated subsequent to the dates to establish the applicant's continuous physical presence in the United States during the qualifying period. Therefore, this evidence is of little or no probative value.

The applicant has not submitted sufficient evidence to establish her qualifying continuous physical presence in the United States from March 9, 2001 to the date the application was filed. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status on this ground will also be affirmed.

The record of proceeding reflects that on January 28, 1999, an immigration judge ordered the applicant removed from the United States to El Salvador. A Warrant of Removal/Deportation, Form I-205, was issued on February 8, 1999. The applicant failed to appear at the San Antonio, Texas district office on March 15, 1999, for her enforced departure.

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 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.