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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**

M<sub>1</sub>

[REDACTED]

FILE: [REDACTED]  
[EAC 09 147 70402]

OFFICE: VERMONT SERVICE CENTER

DATE: **MAR 24 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

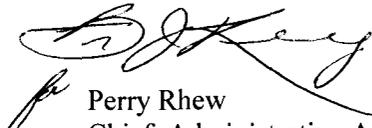
ON BEHALF OF APPLICANT:

[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 or reopen, 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 claims to be a 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 she was eligible for late registration.

On appeal, counsel asserts that the applicant is eligible for late registration as she has a renewed application for adjustment of status currently pending before the immigration court in Miami.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

Persons applying for TPS offered to El 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. 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 she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 U.S. 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 record reflects that on April 30, 2001, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, based on an approved Form I-130, Petition for Alien Relative, filed on her behalf by her United States citizen spouse. On November 5, 2005, District Director, Miami, Florida denied the application.<sup>1</sup> On January 13, 2009, the applicant renewed her Form I-485 in immigration court.

The regulation at 8 C.F.R. § 244.2(g) provides that the applicant has a 60-day period immediately following the denial of the application for adjustment of status, or immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2)(ii), to file an application for late registration. The TPS application, in this case, was not filed until February 20, 2009. Accordingly, on June 29, 2009, the director denied the TPS application.

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<sup>1</sup> The petitioner had passed away in 2002, and pursuant to *Matter of Varela*, 13 I&N Dec. 453, no further action would be taken on the petition.

On appeal, counsel asserts that although the applicant's adjustment of status application was denied, she is claiming the same ground of eligibility for adjustment of status in removal proceedings. Counsel assert the adjustment of status application, while not pending, is subject to further review in front of the Executive Office of Immigration Review (EOIR).

Counsel's assertion, however, is not persuasive. If the applicant had renewed her Form I-485 before the court within the 60-day period following the denial of her application, and this proceeding was still pending at the time she filed her TPS application, she would have met the criteria described in 8 C.F.R. § 244.2(f)(2)(ii). The applicant, however, waited over three and a half years before renewing her Form I-485 in the immigration court. Likewise the applicant waited the same time period to file a TPS application. Furthermore, a Form I-862, Notice to Appear, was issued on November 3, 2008, in Miami, Florida, which was based on the applicant's entry into the United States without inspection; it was not issued based on the adjustment of status application.

Accordingly, the applicant has failed to establish that she has met the requirements for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the district director's decision to deny the TPS application will be affirmed.

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.