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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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U.S. Citizenship  
and Immigration  
Services

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DATE: **JAN 27 2012** Office: VERMONT SERVICE CENTER

FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for 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 (AAO) on appeal. The case is remanded for further action.

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. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel asserts that the director failed to mention the extensive responsive evidence submitted in response to the Request for Evidence. Counsel states by failing to consider this evidence, the director erroneously concluded that the applicant submitted insufficient documentation to establish her eligibility for late registration, continuous physical presence and continuous residence. Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.<sup>1</sup> However, more than ten months later, no additional correspondence has been presented by either counsel or the applicant.

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 Secretary 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

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<sup>1</sup> Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

- (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 term *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 term *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 designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until September 9, 2013, upon the applicant's re-registration during the requisite time period.

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 first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her application on March 8, 2010. 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.

On May 27, 2010, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). Although counsel submitted a brief with supporting documents, the director's decision neither addressed the brief nor the documents. The director determined that the applicant had failed to establish she was eligible for late registration and denied the application. Counsel's response will be considered on appeal.

Counsel, citing *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), asserted that the applicant was eligible for late registration because she received ineffective assistance of counsel during the initial registration period. Counsel submitted evidence confirming that former counsel had been notified of the incompetency claim and that evidence demonstrating that a complaint, based upon the allegations, had been filed with the appropriate disciplinary authorities. Counsel also submitted a decision dated September 23, 2009, from the Idaho State Bar, which found "clear and convincing evidence that [former counsel] violated I.R.P.C. 1.3, by failing to act with reasonable diligence regarding the Second TPS."

Based on the documents submitted, the record is sufficient to establish that the applicant received ineffective assistance of counsel under *Matter of Lozada*. Accordingly, the TPS application will be considered timely filed and the director's finding on this issue will be withdrawn.

The second and third issues to be addressed 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.

On May 27, 2010, the applicant was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The director determined that the applicant had failed to submit sufficient evidence of her continuous residence and continuous physical presence during the requisite periods and to establish her eligibility for TPS. As noted above, counsel's response was not addressed by the director in his decision to deny the application. The documents submitted in response to the notice of May 27, 2010, will be considered on appeal. Counsel, in response, submitted the following:

- Earnings statements from [REDACTED] Wyoming dated January 15, 2001 through June 1, 2010.

- A letter dated June 24, 2010, from [REDACTED] of [REDACTED] who attested to the applicant's full-time employment since 1999.
- Documents dated in 2002, 2005 and 2006 from [REDACTED] along with a printout of the applicant's banking history, which reflects that a savings account was opened on November 12, 1999.
- A document dated May 22, 2002, from [REDACTED] indicating the applicant was seen for an eye examination.
- Billing statements dated December 23, 2002, and July 3, 2007, from [REDACTED] in Jackson, Wyoming.
- Rental agreements entered into on October 1, 2003, and March 1, 2010, between the applicant and [REDACTED] Court in Jackson, Wyoming.
- A letter dated April 28, 2003, from the Internal Revenue Service, assigning the applicant a taxpayer identification number.
- A letter dated April 26, 2004 from the Internal Revenue Service regarding an error on the applicant's 2002 federal income tax return.
- Form 1099 for 2003 and 2006.
- Utility statements from [REDACTED] for the periods December 28, 2005 through January 26, 2006, and May 28, 2006 through April 25, 2006, and a notice dated November 19, 2007.
- A Contract for Title entered into on June 1, 2003, between the seller, the applicant and another individual.
- Notarized loan payment statement reflecting payments from July 3, 2003 through June 5, 2010.
- Medical billing statements dated during April 2003, July 2003, August 2003, and September 2003 from [REDACTED]
- Vehicle registrations issued on May 31, 2005, November 27, 2006 and November 27, 2007, from the state of Wyoming
- Several receipts and billing statements issued throughout the requisite periods.

Coupled with the wage and tax statements submitted with the TPS application, the documents submitted above corroborate the applicant's claim of continuous residence and continuous physical presence in the United States during the requisite periods. The applicant has, thereby, established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the director's decision to deny the application on these grounds will also be withdrawn.

The applicant has overcome the grounds for the denial of the application. However, the record reflects that the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording her the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial

pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

**ORDER:** The case is remanded to the director for further action consistent with the above and entry of a decision.