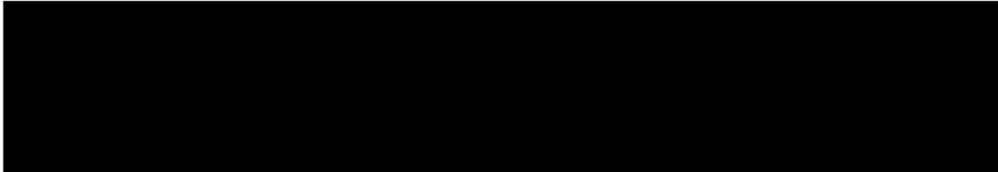




U.S. Citizenship  
and Immigration  
Services

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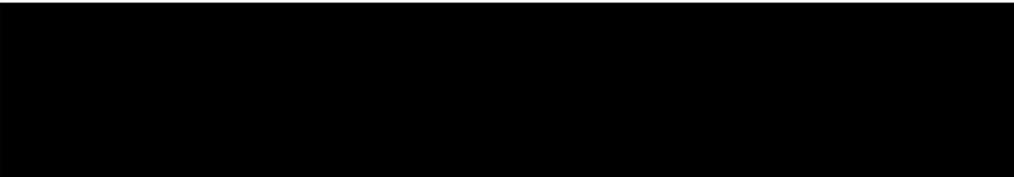
Applicant:



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 office that originally decided your case. Any further inquiry must be made to that office.

for  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was initially approved, then denied by the Director, Vermont Service Center (VSC). An appeal to the Administrative Appeals Office (AAO) from the first denial of the application was remanded to the VSC, and the application was again denied by the VSC. An appeal from that second denial of the application is currently before the AAO. 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 record reflects that the applicant, through counsel, filed her Form I-821, Application for Temporary Protected Status, with the VSC on December 30, 2004, after the initial registration period had ended. In support of the application, counsel submitted evidence that the applicant was eligible for late registration because her parents, [REDACTED] and [REDACTED] are TPS registrants. The VSC approved the application on April 14, 2005.

According to counsel, the applicant was subsequently notified, on September 2, 2005, that the approval of the application was being reopened *sua sponte* by the director. The VSC then denied the application on September 14, 2005, on the ground that the applicant had not entered the United States until July 26, 2004, and was, therefore, unable to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. An appeal from that decision, filed on September 26, 2005, was remanded to the VSC by the AAO on November 27, 2006, because the record of proceedings was incomplete.

Upon remand, the VSC requested the applicant, on March 14, 2007, to submit evidence of her eligibility for late registration, as well as her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Following receipt of the applicant's response, the VSC again denied the application on April 27, 2007. An appeal from that decision, filed on May 31, 2007, is currently before the AAO.

On appeal, counsel for the applicant submits a brief.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;

- (e) Is not ineligible under § 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.

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. Subsequent extensions of the TPS designation have been granted, 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 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 she meets the above requirements. Applicants must submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On appeal, counsel asserts that the application should be approved (1) based on "issue preclusion and claim preclusion," because the AAO remanded the original decision denying the application to the VSC on November 27, 2006; (2) because the applicant satisfies the continuous residence and continuous physical presence requirements since the residence and physical presence of each of her parents are imputed to her; (3) because the regulation would be *ultra vires* if children of TPS applicants were denied TPS only because of their date of entry; (4) based on humanitarian grounds, the integrity of the family unit, family reunification, and customary international law.

The record reflects that the applicant is the child of aliens who are currently eligible to be TPS registrants; therefore, she is eligible to file a late application for TPS under 8 C.F.R. § 244.2(f)(2)(iv).

However, the late registration provisions under the section do not relax the other requirements for eligibility for TPS. The regulations in 8 C.F.R. § 244.2 are clear. **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 applicant did not enter the United States until July 26, 2004; therefore, she cannot satisfy the continuous residence and continuous physical presence requirements of 8 C.F.R. §§ 244.2(b) and (c). Furthermore, while certain **grounds of inadmissibility** may be waived, there is no waiver available, even for humanitarian reasons, of the continuous residence and continuous physical presence requirements as stated above.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish her nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

This decision does not preclude the applicant from applying for any other remedies or benefits available to her under the law and regulations. It is noted that the applicant was placed in removal proceedings immediately after her entry into the United States in July 2004, and was ordered to appear at a hearing before the Immigration Court in Newark, New Jersey, on January 4, 2005.

**ORDER:** The appeal is dismissed.