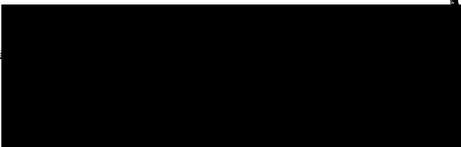




U.S. Citizenship
and Immigration
Services

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M

FILE: [Redacted]

Office: VERMONT SERVICE CENTER

Date: JUL 30 2004

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: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
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 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 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 continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

On appeal, the applicant submits additional documentation.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 applicant filed her initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on November 14, 2002.

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 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 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 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).

On March 18, 2003, the applicant was requested to submit evidence to establish her continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant was also requested to submit evidence to establish her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2).

A review of the record reveals that the applicant submitted the following documentation in support of her initial Form I-821 submission, and in response to the director's request for additional evidence:

1. A photocopy of a Certificate of Marriage, indicating that she married [REDACTED] on September 26, 2002 in Winchester, Virginia;
2. A photocopy of an Employment Authorization Document (EAD) issued to [REDACTED] an El Salvadoran national, alien registration number [REDACTED];
3. An affidavit from [REDACTED] dated November 9, 2002, stating that the applicant has lived at [REDACTED] since February 28, 2000;
4. A photocopy of her El Salvadoran personal identification card [REDACTED], with English translation, issued on March 6, 2002;
5. A photocopy of the identification page from her El Salvadoran passport, issued on August 15, 2002, in Washington, D.C.; and,
6. An un-translated letter from Iglesia Pentecostal Unida Hispana Inc.

The director determined that evidence submitted was insufficient to establish that the applicant: 1) had continuously resided in the United States since February 9, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and, 3) was eligible for late registration. The director denied the application on August 15, 2003.

On appeal, the applicant submits a photocopy of her certified civil marriage certificate, issued by the Circuit Court, Winchester, Virginia.

The first issue to be addressed in this proceeding is whether the applicant is eligible for late registration.

There is no evidence contained in the record to establish that the applicant's spouse is "currently eligible to be a TPS applicant." Although her spouse has filed a TPS application, there is no indication that his application has been approved. Furthermore, in order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). Since the applicant, during the initial registration period, was not the spouse of an alien currently eligible to be a TPS registrant, she is not eligible for late registration. Consequently, the director's conclusion that the applicant failed to establish her eligibility for late registration will be affirmed.

The second issue to be addressed in this proceeding is whether the applicant has established her continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant claims to have lived in the United States since February 2000. However, she has not provided any objective evidence to establish her residence and physical presence in the United States in 2000 or 2001. The only item (No. 3, above) submitted by the applicant to establish her residence and physical presence in the United States during the requisite time periods is a self-serving affidavit from her spouse.

It must be concluded that the applicant has failed to overcome the director's concerns. The applicant has not submitted sufficient credible evidence to establish her continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status for these reasons, as well, will be affirmed.

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.