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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUL 30 2004

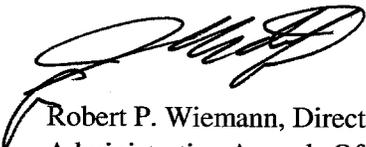
IN RE: Applicant: [Redacted]

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.


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 a brief statement and additional documentation. The applicant states that she resided in the United States "during 2001, 2002 and now 2003." She also asserts that she has had a common-law relationship for more than twenty years with Jaime Velasquez, a native and citizen of El Salvador who has been granted TPS.

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 TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on November 4, 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 7, 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 photocopied documentation in support of her initial Form I-821 submission, and in response to the director's request for additional evidence:

1. An Employment Authorization Document (EAD) and social security card belonging to [REDACTED]
2. A cash receipt issued to [REDACTED] on April 10, 2002;
3. An undated mailer from [REDACTED] addressed to the applicant at [REDACTED]
4. Utility bills issued to [REDACTED] dated December 2002, and March 2003;
5. An English translation of an El Salvadoran birth certificate for [REDACTED] showing the applicant and [REDACTED] as the child's parents;
6. [REDACTED] quarter interim performance report for [REDACTED] for the period November 12, 2002 through December 13, 2002;
7. [REDACTED] card issued to [REDACTED] effective November 1, 2002;
8. An earnings statement issued by [REDACTED], Inc., Stamford, Connecticut, to [REDACTED] social security number [REDACTED] for the period ending September 30, 2001;
9. A bill payment stub from [REDACTED] issued to [REDACTED] [REDACTED] dated November 23, 2002;
10. An Internal Revenue Service (IRS) 2001 Form W-2, Wage and Tax Statement, issued to [REDACTED] social security number [REDACTED] by Double H-N G. W. Inc. [REDACTED]
11. An IRS 2001 Form W-2 issued to [REDACTED] social security number [REDACTED], by [REDACTED]

The director determined that the evidence submitted was insufficient to establish that the applicant: 1) had continuously resided in the United States since February 13, 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 May 13, 2003.

On appeal, the applicant submits additional photocopied documentation, including:

12. Her El Salvadoran birth certificate, with English translation;
13. Her El Salvadoran "Personal Identification Card," with English translation; and,
14. A letter from [REDACTED] Personnel Manager of McDonald's in Ramsey, New Jersey, dated October 28, 2002. Ms. [REDACTED] asserts that the applicant has been employed by that organization since July 31, 2000, working 40 hours per week at \$6.05 per hour. It is noted that there is a handwritten correction on the letter changing the date of the applicant's initial employment from July 31, 2001 to July 31, 2000.

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

It is noted that the applicant states on appeal that she has been living in a common-law marriage relationship with a TPS registrant for twenty years. However, on her Form I-821, Application for Temporary Protected Status, and again on her Form I-765, Application for Employment Authorization, the applicant claimed to be single. The applicant has failed to explain why she repeatedly certified that she was single if she considered herself to have been in a common-law marriage since she was sixteen years-of-age in 1982. Thus, the applicant's current claim to have been a common-law spouse of a TPS registrant is without merit.

The record of proceeding confirms that the applicant filed her initial TPS application on November 4, 2002, after the initial registration period had closed. A review of the record reveals that the applicant has not submitted any 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 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.

Much of the documentation submitted by the applicant refers not to her, but to her alleged common-law spouse, [REDACTED] (No.'s 1, 2 and 4, above), and their son, [REDACTED] (No's 5, 6, and 7, above).

When applying for TPS, the applicant indicated that she had used the surname of [REDACTED]" and that she had not ever used a social security number. However, No.'s 8, 10, and 11 (above) show the applicant's social security number, under the surname of [REDACTED] as [REDACTED]

The applicant claims to have lived in the United States since May 2000. However, none of the documentation submitted predates September 2001, other than No. 14, which appears to have been altered. Furthermore, No. 14 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.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any

inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies contained in the documents submitted. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

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.