



U.S. Citizenship
and Immigration
Services

MAI

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: **OCT 26 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:

[REDACTED]

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

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**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office 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 he was eligible for late registration.

On appeal, counsel submits a statement and additional evidence.

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.

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. The record reveals that the applicant filed his initial application Citizenship and Immigration Services (CIS) on August 25, 2003.

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 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 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 September 18, 2003, the applicant was requested to provide evidence to establish his eligibility for late initial registration. In response, counsel provided documentation relating to the applicant's claim of continuous residence and physical presence in the United States, and a letter providing information regarding the applicant's criminal charges.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on December 10, 2003.

On appeal, counsel asserts that the applicant qualifies for late initial registration as the spouse of an alien who is currently eligible to be a TPS registrant. Counsel submits the following evidence in support of his assertion:

1. a State of Florida Marriage Record indicating that [REDACTED] a citizen of El Salvador, and [REDACTED] also a citizen of El Salvador, were married in Kissimmee, Florida, on December 29, 2003;
2. a State of Florida birth certificate indicating that [REDACTED] was born to [REDACTED] and [REDACTED] in Osceola County, Florida, on July 30, 2002; and,

3. an Employment Authorization Card valid from January 21, 2003 to September 9, 2003, indicating that [REDACTED] a citizen of El Salvador, has been granted TPS.

While the evidence of record confirms that the applicant's wife was granted TPS, the record also shows that the applicant was not married until December 29, 2003. 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).

On appeal, counsel asserts that the applicant has been Ms. [REDACTED] common-law husband since 2001. He further asserts that El Salvador has recognized common-law marriages since 1993. Counsel submits material from the CIS website regarding the recognition of common-law marriage in El Salvador. Since the applicant claims to have lived in the United States since 1998, the recognition of common-law marriage in El Salvador is not relevant to the applicant's claim to be Ms. [REDACTED] common-law husband. Moreover, the record shows that the applicant indicated on the Form I-821, Application for Temporary Protected Status, signed on August 18, 2003 under penalty of perjury, that he was single. The applicant also certified that he was single when he signed Form I-765, Application for Employment Authorization, on August 18, 2003. It is noted that the record contains a rental agreement for The Palms Apartment Homes in Kissimmee, Florida, indicating the applicant would be moving into an apartment with Migual A. Portillo on June 16, 2000. Clearly, the applicant was not living in common-law relationship with Ms. [REDACTED] in 2000.

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 explain why he certified that he was single if he considered himself to have been in a common law marriage during this time period. Thus, counsel's claim that the applicant has been the common law spouse of a TPS registrant since 2001 is without merit. Further, the state of Florida, where the applicant resides, does not recognize common law marriages entered into after 1968. FLA. STAT. ANN. section 741.211 (2002). Since the applicant, during the initial registration period, was not the spouse of an alien currently eligible to be a TPS registrant, he is not eligible for late registration. The applicant has not submitted any evidence to establish that he has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Therefore, the application also may not be approved for these reasons.

Additionally, the record indicates that the applicant has been charged with the following criminal offenses:

1. Date of arrest: November 6, 2000
Agency: Kissimmee Police Department
Charge: DUI ALCOHOL OR DRUGS FIRST CONVICTION - 2ND DEGREE MISDEMEANOR
STATUTE: FL316.193(L)
2. Date of arrest: December 13, 2000

Agency: Osceola County Sheriff's Office

Charge: DRIVE WHILE LICENSE SUSPENDED FIRST CONVICTION - 2ND DEGREE
MISDEMEANOR

Statute: FL322.34(SA)

3. Date of arrest: January 9, 2001

Agency: Osceola County Sheriff's Office

Charge: FAILURE TO APPEAR FTO WRITTEN PROMISE TO APPEAR FEL MISD - FELONY

Statute: FL901.31

These offenses may render the applicant ineligible for TPS under section 244(c)(A)(iii)(I) of the Act, 8 C.F.R. § 244.4(a). However, since the court dispositions of these offenses are not contained in the record of proceeding, these charges will not be addressed at this time.

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.