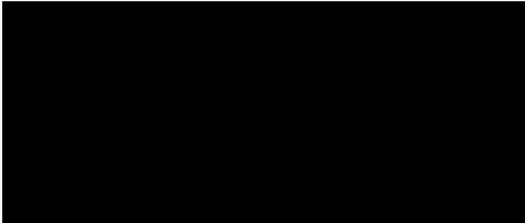


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U.S. Citizenship
and Immigration
Services

identifying the risks to
prevent the unauthorized
invasion of the United States



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FILE:



[EAC 03 260 52730]

OFFICE: VERMONT SERVICE CENTER

DATE: AUG 25 2005

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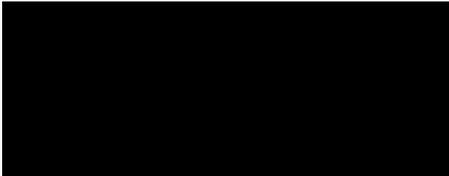
Applicant:



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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 had failed to establish that she: (1) had continuously resided in the United States since February 13, 2001; (2) had been continuously physically present in the United States from March 9, 2001, to the date of filing the application; and (3) 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 alien 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 § 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.

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.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial application on September 12, 2003.

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).

The first issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, to the date of filing the TPS application.

In support of her TPS application, the applicant submitted:

1. A statement dated August 25, 2003, from [REDACTED] Executive Chef of Centerport Yacht Club, indicating that the applicant has been under his employ since February 13, 2001, working 8 hours a day, 5 days per week.

On November 5, 2003, the applicant was requested to submit additional evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted:

2. Copies of generic rent receipts dated February 1, 2001; March 1, 2001; April 1, 2001; and October 1, 2003, signed by [REDACTED]

The director noted that the rent receipts submitted have little evidentiary value because there was no way to verify their authenticity and they are generic in nature. She added that without other supporting documentation, the hand-written rent receipts have little evidentiary value, and that CIS would have accepted a copy of the

applicant's rental agreement or a notarized affidavit from her landlord. The director, therefore, denied the application on March 8, 2004.

On appeal, counsel requests that the following affidavit be accepted:

3. An affidavit dated March 15, 2004, from [REDACTED] stating that she is the landlord of the premises where the applicant "joined her husband as a tenant on 01/22/01," that she later saw the applicant on 3/11/01, and she "saw her again while doing repairs to her apartment on September 13, 2003."

The employment letter from [REDACTED] (No. 1 above) 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 letter is not in affidavit form and attested to by the employer under penalty of perjury; and the employer does not provide the address where the applicant resided during the period of her employment, the exact period(s) of employment, the periods(s) of layoff, if any, and the applicant's duties with the company.

Additionally, as determined by the director, the hand-written generic receipts (No. 2 above) are of little evidentiary value. Although counsel, on appeal, furnished an affidavit from [REDACTED] (No. 3 above), it is noted that Ms. [REDACTED] signature on this affidavit is different from the signatures on the generic receipts. Further, if Ms. [REDACTED] did, in fact, issue the generic receipts on February 1, 2001, on March 1, 2001, on April 1, 2001, and on October 1, 2003, she has not explained the inconsistency of her statement that she saw the applicant three times, on January 22, 2001, on March 11, 2001, and on September 13, 2003.

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, in fact, 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 discrepancies in the evidence she provided. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The applicant has failed to establish that she has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for this reason will be affirmed.

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

The record of proceeding confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

On November 5, 2003, 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). In response, the applicant submitted a copy of an Employment Authorization Card issued to [REDACTED]

The director determined that the applicant had failed to establish that she was eligible to take advantage of the late registration provisions of TPS and denied the application on March 8, 2004.

On appeal, counsel neither addressed nor submitted any evidence to establish the applicant's eligibility for late registration.

It is noted that the applicant previously furnished with her TPS application, a copy of a Certificate of Marriage indicating that the applicant and Mr. [REDACTED] were married in New York on August 8, 2003.

The applicant's marriage certificate and the Employment Authorization Card of Mr. [REDACTED] are evidence that the applicant is the spouse of a current TPS registrant. However, while the regulations may allow spouses of aliens who are TPS-eligible to file their applications after the initial registration period had closed, the applicant, in this case, was not married to Mr. [REDACTED] at the time of the initial registration period.

Therefore, the applicant, during the initial registration period, did not meet the qualification of a spouse of an alien currently eligible to be a TPS registrant described in 8 C.F.R. § 244.2(f)(2)(iv). Consequently, the director's decision to deny the application for this reason will also 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.