

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M 1



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 01 2005

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 "Robert P. 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 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 that she was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts that she qualifies for TPS in that she has been in the United States since September of 2000.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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. A subsequent extension of the TPS designation has been granted with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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).

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

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS), on August 25, 2003.

The record of proceedings 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, 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 she 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).

On September 22, 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). The applicant was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish that she was eligible for late registration and denied the application on March 9, 2004.

On appeal, the applicant reasserts her claim.

Although the applicant submitted evidence in an attempt to establish her qualifying residence and physical presence in the United States, this evidence does not mitigate the applicant's failure to file her Application for Temporary Protected Status within the initial registration period. 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 had failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on September 22, 2003 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following documentation:

1. An affidavit of support from [REDACTED] in which she states that the applicant has been her son's babysitter since April of 2001;
2. An affidavit of support from [REDACTED] in which she states that the applicant has been her daughter's babysitter since January of 2000; and
3. An affidavit from [REDACTED] in which he states that the applicant has resided at [REDACTED] in Newark, NJ since 2000 and pays him \$150.00 per month for rent.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on March 9, 2004.

On appeal, the applicant reasserts her claim and submits the following documentation:

4. An affidavit of support from [REDACTED] dated March 24, 2004, in which she states that the applicant lives with her at [REDACTED] Newark, NJ and contributes to paying the rent;
5. An affidavit from [REDACTED] Federal Union in which she states that the applicant was an employee of the company in 2000 and worked as a maintenance person;
6. A doctor's notice dated November 10, 2000, and bearing the applicant's name;
7. A copy of an IRS Form W-2 for the tax year 2000 bearing the applicant's name and address [REDACTED] and the company name of Federal Union;
8. Medical discharge instructions from [REDACTED] Center dated December 6, 2000, and bearing the applicant's name; and
9. A copy of an IRS Form W-7 (SP) application for personal identification number bearing the applicant's name and address of [REDACTED]

The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001. The affidavits submitted have little evidentiary weight or probative value. Although the affiants stated that the applicant either resided with them or worked with them, they failed to provide independent documentary evidence to substantiate the claims. The applicant claims to have lived in the United States since September of 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these affidavits; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). Although the applicant submitted a copy of her Form W-2 for the year 2000 showing that she received a salary from Federal Union, there is nothing in the record to show that the company employed the applicant from February 13, 2001, to August 25, 2003. Further, although the other tax document (No. 9 above) and medical documents (Nos. 6 and 7 above) show that the applicant was in the United States, they do not demonstrate that she was continuously present from February 13, 2001, to August 25, 2003.

The applicant has 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 TPS on these grounds will also be affirmed.

An alien applying for TPS 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.