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FILE: [REDACTED]
[SRC 03 260 53572]

Office: TEXAS SERVICE CENTER Date: JUN 07 2005

IN RE: 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: 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.

Cindy N. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office

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 applying for 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.

On appeal, the applicant 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 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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 Secretary of 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 reveals that the applicant filed her initial TPS application with Citizenship and Immigration Services (CIS), on September 17, 2003. It is noted that the applicant checked the box indicating that this was an application for re-registration, with the notation "under husband[']s TPS." The record does not, however, contain any evidence that the applicant filed an earlier application for TPS, and this must be considered as an application for late initial registration.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following

the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

The burden of proof is upon the applicant to establish that 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On January 5, 2004, 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 during the requisite periods. In addition, the applicant was requested to provide photo identification or a national identity document bearing her photograph and/or fingerprint. The applicant, in response, provided photocopies of: her El Salvadoran passport issued on February 10, 2004, by the Consulate General, Houston, Texas; a State of Texas Marriage License indicating that the applicant married [REDACTED] Fort Bend, Texas, on April 17, 2003; a copy of the Employment Authorization document (EAD) for [REDACTED] under Category A12, with validity from November 12, 2003 through March 9, 2005; and, an affidavit from [REDACTED] dated February 11, 2004, stating that the applicant lived with him at [REDACTED] Texas, from January 2001 to present.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on March 2, 2004.

On appeal, the applicant states that she has been a model citizen in her community and needs to work in order to support her family and mother, and to pay for her education. In support of the appeal, the applicant submits:

1. An affidavit from [REDACTED] dated March 23, 2004, stating that the applicant and [REDACTED] lived with me at the [REDACTED] they only lived together but where [sic] not legally married SINCE January 5, 2001 to the October 2003, all the receipts and bills of household was under my name.”;
2. An affidavit from [REDACTED] Spanish Minister [REDACTED] Rosenberg, Texas, stating that he met the applicant and [REDACTED] in 2001, that they attended church since January 2002, and that they had lived together before he legally married them on April 17, 2003;
3. An untitled, undated copy of a photograph;
4. A letter from [REDACTED] Company, Houston, Texas, dated March 28, 2001, addressed to [REDACTED] regarding a loss;
5. The Employment Authorization documents (EAD) for [REDACTED] under Category A12, with validity from January 13, 2003 through January 13, 2004, and from November 12, 2003 through March 9, 2005;
6. The State of Texas Identification Card for [REDACTED], issued in 2003;
7. The Social Security card for [REDACTED] and,
8. The applicant’s fingerprint application worksheet dated October 15, 2003, and her copy of an employment authorization application dated “09/12/2003,” indicating her address at [REDACTED] Texas.

On appeal, the applicant states that she and her husband were living together since 2001, during the initial registration period, and have remained together since their marriage in 2003. Although the applicant does not assert that they lived together in a common-law union, it is noted that, even if she had so stated, under the provisions of the Texas Family Code a common-law marriage may be shown by establishing three factors: (1) an agreement by the parties to be married, (2) living together in Texas after the agreement is made, and (3) representation to others by the parties that they are married. *Matter of Garcia*, 16 I&N Dec. 623, 624 (BIA 1978).

It also is noted that the applicant states that she and her husband lived together prior to their marriage; however, the affidavits from [REDACTED] and [REDACTED] are inconsistent with each other, as one indicates that the applicant resided with her spouse at a different address than is given in the other affidavit that discusses only the applicant, during the same time frame.

While it appears that the applicant is married to a TPS registrant, their marriage took place on April 17, 2003, in Fort Bend, Texas. Therefore, she has not met the requirements of 8 C.F.R. § 244.2(f)(2), which indicates that the criteria making one eligible for late registration must have existed during the initial registration period. Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

Beyond the decision of the director, the applicant has submitted insufficient evidence of her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. Other than the State of Texas Marriage License dated in April 2003, and her El Salvadoran passport issued on February 10, 2004, by the Consulate General, Houston, Texas, the record contains only affidavits attesting to her residence in the United States. These affidavits are not supported by corroborative evidence demonstrating the applicant's continuous residence and continuous physical presence in the United States prior to 2003. The evidence in her husband's name is insufficient to establish that the applicant also was present in the United States during that timeframe. The applicant has, therefore, also failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the applicant must also be denied for these reasons.

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.