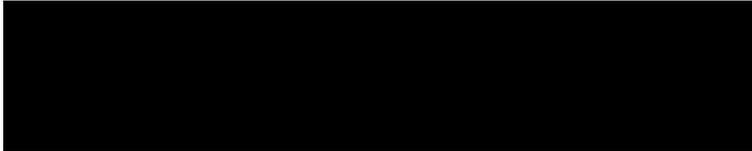


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FILE:



[EAC 04 067 53409]

Office: VERMONT SERVICE CENTER

Date: **OCT 04 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.

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 she was eligible for late registration. The director also found that the applicant had failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits additional evidence.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period. That application was denied on June 6, 2003, for failure to respond to a request for evidence to establish her eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on January 8, 2004. The director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on July 17, 2002. That initial application was denied by the director on June 6, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on January 8, 2004. Since the initial application was denied on June 6, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 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 § 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.

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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest granted until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed her current application with Citizenship and Immigration Services (CIS) on January 8, 2004.

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).

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

The applicant initially submitted the following:

1. an affidavit dated July 3, 2002, from [REDACTED] stating that she has known the applicant "for the last couple of years;"
2. a letter dated May 22, 2002, from Reverend John E. McLaughlin, Pastor of St. Benedict's Rectory in Somerville, Massachusetts, stating that the applicant came to the United States in December 2000, and "is a participant in this parish;"

3. an affidavit dated December 28, 2003, from [REDACTED] stating that she has known the applicant "since January 2001" and that the applicant was a babysitter for her daughters from January 2001 to May 2001;
4. a letter dated January 5, 2004, from [REDACTED] Family Development Specialist/Supervisor at Somerville Early Head Start in Somerville, Massachusetts, stating that the applicant and her family have been enrolled in her program since November 28, 2001;
5. a photocopy of a Massachusetts birth certificate indicating that a daughter, [REDACTED] was born to the applicant and [REDACTED] April 23, 2002;
6. a photocopy applicant's daughter's immunization record reflecting immunizations from April 2002 through December 2003;
7. photocopies of Verizon bills for the periods from March 15 to April 14, 2003 and from June 15 to July 14, 2003;
8. a photocopy of an AT&T bill for the period from November 3 to December 2, 2003;
9. photocopies of generic rent receipts dated between January 2001 and December 1, 2002; and,
10. a photocopy of a Travelers Express Company, Inc. receipt dated December 29, 2003.

As stated above, the applicant was requested on May 12, 2004 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant stated that she worked as a babysitter and was paid in cash when she first arrived in the United States. She submitted the following documentation:

11. a letter dated May 25, 2004, from Dr. Alexis Klock stating that the applicant has been his patient at Union Square Family Health Practice in Somerville, Massachusetts, since September 11, 2001;
12. a letter dated May 27, 2004, from Kathy Revenue, Payroll Manager at Royal Institutional Services, Inc., Worcester Massachusetts, stating that the applicant has been employed as a production worker at her company's Somerville facility since March 29, 2003;
13. photocopies of Verizon bills with due dates of May 17, 2004 and June 16, 2004; and,
14. a photocopy of a Western Union money transfer receipt dated February 9, 2004.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on July 1, 2004.

On appeal, the applicant submits the following:

15. an affidavit dated July 21, 2004, from [REDACTED] stating that the applicant doesn't have documents such as bills in her own name to establish her residence and physical presence in the United States since 2000 because the bills are in his name; and,
16. photocopies of documents previously submitted in support of the application.

The applicant has not submitted sufficient evidence to establish continuous residence and continuous physical presence in the United States prior to September 11, 2001, the date cited by Dr. Klock in his letter (No. 11 above). The employment letter from [REDACTED] (No. 3 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, Ms. [REDACTED] does not provide the address where the applicant resided during the period of her employment. Similarly, the affidavit from Pastor McLaughlin (No. 2 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)(v). Specifically, the pastor does not provide the address where the applicant resided during the period of her involvement with the church. Additionally, the affidavit from [REDACTED] (No. 1 above) is not sufficient to establish the applicant's qualifying continuous residence and physical presence during the period in question. [REDACTED] does not provide the specific dates of her acquaintance with the applicant, the basis for her acquaintance with the applicant, or the applicant's address(es) since she became acquainted with the applicant. Furthermore, affidavits by themselves are not persuasive evidence of continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable evidence to establish an alien's employment and membership in organizations such as churches or labor unions during the requisite periods to establish continuous residence and continuous physical presence in the United States as described at 8 C.F.R. § 244.9(a)(2)(i) and (iv).

The copies of generic rent receipts provided by the applicant are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as generic rent receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since December 3, 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these rent receipts; 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). The applicant has not submitted sufficient evidence to establish continuous residence and continuous residence in the United States from February 13, 2001, to September 11, 2001, or her continuous physical presence in the United States from March 9, 2001 to September 11, 2001.

It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed. The second issue in this proceeding is whether the applicant is eligible for late registration.

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 fell within at least one of the provisions described in 8 C.F.R. 244.2(f)(2) above.

The record contains a photocopy of the applicant's Salvadoran national identity document (cedula), issued on October 16, 2000, identifying her as [REDACTED] wife [REDACTED]

On May 12, 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. The applicant, in response, stated that she qualified for late registration because she had a prior TPS application pending during the initial registration period and because her husband, [REDACTED] is an alien currently eligible for TPS. She did not submit any independent evidence to corroborate her assertion.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on July 1, 2004.

On appeal, the applicant submitted a photocopy of her Salvadoran marriage certificate with English translation indicating that she and [REDACTED] were married in El Salvador on August 17, 1996, along with a photocopy of an Employment Authorization Card indicating that [REDACTED] CIS number [REDACTED] has been granted TPS.

The applicant has submitted sufficient evidence to establish that she was the spouse of an alien who was eligible to be a TPS registrant during the initial registration period as described at 8 C.F.R. § 244.2(f)(2)(iv). Therefore, she has overcome this ground for denial of the application. Nevertheless, the applicant remains ineligible for TPS due to her failure to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001 as discussed above.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.