

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MI

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: JUL 05 2006

[LIN 03 276 50229]

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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. An untimely appeal was treated as a Motion to Reopen and was denied again by the Director, Nebraska Service Center. The applicant appealed the director's decision on the motion and it 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 determined that the applicant failed to establish she: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On motion, counsel for the applicant stated that affidavits are acceptable forms of evidence, and the director misapplied the regulations. Counsel also stated that the applicant was providing evidence to establish continuous physical presence in the United States during the qualifying period.

The director determined that the applicant failed to overcome the basis for the denial and denied the application again.

On appeal, counsel for the applicant asserts that affidavits are acceptable forms of evidence and that the director misapplied the regulations.

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 as 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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2007, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on September 23, 2003. The record indicates that the applicant filed her initial TPS application on March 27, 2003. That application was also denied for failure to establish continuous residence and continuous physical presence during the qualifying period and eligibility for late registration.

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 is eligible for late registration.

The record of proceeding confirms that the applicant filed this 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). 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 the late initial registration. 8 C.F.R. § 244.2(g).

On October 14, 2003, the applicant was provided the opportunity to submit evidence establishing her nationality and identity and to submit evidence establishing her date of entry and her continuous residence in the United States since on or before February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant submitted evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file her TPS application 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 failed to establish her eligibility for late registration will be affirmed.

The second and third issues in this proceeding are whether the applicant has established her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on October 14, 2003 to submit evidence establishing her *qualifying continuous residence and continuous physical presence* in the United States. The director listed in his decision, the evidence furnished by the applicant in response to his request for additional evidence. He determined that the evidence presented by the applicant indicated gaps in time from May 3, 2001 to January 28, 2002, April 11, to September 7, 2002, and from January 21 to May 1, 2003.

The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application. On motion, counsel for the applicant asserts that affidavits are acceptable forms of evidence and the applicant should be granted the TPS benefits requested. Counsel also states that he was providing evidence to establish continuous physical presence for the time frames specified by the director and submits the following:

1. Statements from [REDACTED] and [REDACTED],
2. An information worksheet dated June 29, 2001.
3. Copies of pay stubs dated April 20, 2002, April 27, 2002, June 14, 2002, July 5, 2002, July 18, 2002, July 25, 2002, August 2, 2002, August 9, 2002, September 28, 2002, October 12, 2002, October 19, 2002, October 26, 2002, November 2, 2002, November 9, 2002, November 16, 2002, November 23, 2002, November 30, 2002, December 14, 2002 and December 21, 2002. For the time period from January 21, 2003 to May 1, 2003: the applicant provided a copy of a payroll history report with weekly pay dates from January 2, 2003 to March 31, 2003 and other weekly pay stubs dated from December 28, 2002 to March 29, 2003, and other pay stubs dated May 4, 2003, May 11, 2003, May 18, 2003 and May 25, 2003.

Ms. [REDACTED] the applicant's sister indicates that the applicant has lived with her since 1998 and that when she was not working; her sister stayed home and took care of her children. Mr. [REDACTED] states that he has

known the applicant since April 2001 and that the applicant took care of her son. [REDACTED] and [REDACTED] state that they have known the applicant since November 2001. However, these statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Contrary to counsel's assertions, affidavits are not, by themselves, persuasive evidence of residence or physical presence. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v).

The applicant has not submitted sufficient evidence to establish her qualifying residence since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. She has, therefore, 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 temporary protected status on these grounds will also be affirmed.

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.