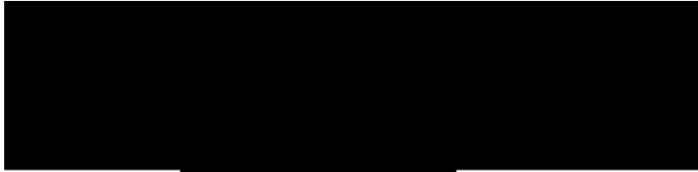


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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: **JUL 31 2006**

[EAC 05 034 51136]

IN RE:

Applicant:



APPLICATION:

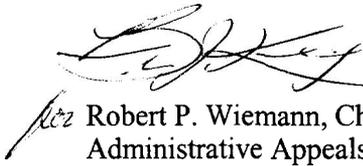
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, Chief  
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) was eligible for late registration; (2) had continuously resided in the United States since February 13, 2001; and (3) had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits additional evidence, including evidence previously furnished and contained in the record of proceeding.

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.
- (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 condition described in paragraph (f)(2) of this section.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid 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 November 1, 2004.

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 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).

The record indicates that the applicant furnished with her initial TPS application: (1) a copy of an El Salvadoran marriage certificate indicating that the applicant married [REDACTED] on June 13, 1991; (2) a copy of Form I-797C, Notice of Action, issued to [REDACTED] on November 1, 2002, advising Mr. [REDACTED] that he had been granted TPS; and (3) copies of Mr. [REDACTED] Employment Authorization Cards.

Accordingly, the applicant has established that she has met the criteria for late initial registration described in 8 C.F.R. § 244.2(f)(2)(iv). Therefore, she has overcome this finding of the director.

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

In a notice of intent to deny dated January 24, 2005, the applicant was requested to submit evidence establishing her continuous residence and continuous physical presence in the United States during the requisite period. The applicant failed to respond; therefore, the director denied the application on March 21, 2005.

On appeal, the applicant submits:

1. A copy of an incomplete and illegible "Consultation Request" from a health center in New Jersey. The original name on the form appears to have been covered over and replaced by the name of the applicant, and the date on the form also appears to have been altered to show the date of August 4, 2000.
2. A copy of a Patient Discharge Instructions from [REDACTED] (no address shown) dated August 5, 2000. The name of the patient was obliterated, and the "Patient's Signature" line was "white-out" and replaced by the signature of the applicant.
3. A copy of a Prescription Voucher from [REDACTED] University Hospital, New Brunswick, New Jersey. The original name and address on the form appears to have been erased or "white-out" and replaced by the name and address of the applicant, and the date was also altered to show the date of July 25, 2000.
4. An incomplete monthly statement from "PSEG" for July 2000, and an undated "Comcast" statement. The name on these statements also appears to have been altered.
5. An apartment lease agreement between [REDACTED] and the applicant for the rent of Apartment No. 4 [REDACTED] Avenue, Plainfield, New Jersey, beginning June 1, 2000 and ending June 1, 2001. It is noted that the applicant's name was signed as a witness rather than as a tenant. Most importantly, it is not clear whether the applicant was in fact the person who signed the lease agreement as the signature on the agreement is different from the applicant's signatures on other documents in the record.
6. Copies of Western Union statements dated September 22, 2004 and December 10, 2004.
7. A copy of a pay statement dated November 14, 2004. The name of the employer was not listed on the statement.
8. Copies of pay statements from [REDACTED] dated April 8, 2005 and March 11, 2005

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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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 documents noted above are not considered credible and greatly reduce the credibility of other documents contained in the record of proceeding.

It is also noted that the record of proceeding does not contain any documents to show residence and physical presence in the United States from February 13, 2001 through April 2004.

Furthermore, the record indicates that on January 26, 2004, the applicant was apprehended by the Border Patrol approximately seven miles west of the Ysleta Port of Entry in El Paso, Texas, subsequent to her entry into the United States without inspection. She stated at that time that she departed from El Salvador on December 15, 2003, and traveled by bus into Guatemala and finally into Mexico from where she effected an illegal entry into the United States. A Notice to Appear, Form I-862, was issued on January 26, 2004, in El Paso, Texas. On December 6, 2004, in Newark, New Jersey, the Immigration Judge administratively closed removal proceedings based on the filing of a TPS application by the applicant.

The applicant was not present in the United States during the period required to establish continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. Therefore, she could not have met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, it is noted that the record of proceeding does not contain the applicant's birth certificate and picture identification, or a passport, to establish his nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for this reason

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.