



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

MI

[REDACTED]

FILE: [REDACTED]
[EAC 05 361 70108]

Office: California Service Center

Date: **AUG 29 2007**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a 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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish *she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts she is eligible for TPS.

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 August 19, 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 September 26, 2005. 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 August 8, 2002. That initial application was denied by the director on August 19, 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 September 26, 2005. Since the initial application was denied on August 19, 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 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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, 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 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 initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed this application with Citizenship and Immigration Services (CIS) on September 26, 2005. 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.

On May 12, 2006, 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 she was eligible for late registration and denied the application on September 13, 2006.

On appeal, the applicant asserts her application was filed on time and that she is eligible for TPS.

The applicant's assertion is contradicted by the record, which indicates this application for TPS was filed on September 26, 2005, after the initial registration period. The applicant must establish that she met one of the conditions set out in 8 C.F.R. 244.2(f)(2) in order to qualify for a late initial registration. The applicant has failed to establish that she is eligible for late registration.

The applicant has not submitted sufficient 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 May 12, 2006, 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. Two documents, each bearing the applicant's name and address, both unsigned, both undated, both issuing instructions for a payment.
2. Copy of a document similar to a pay stub, bearing a period date of August 4, 2002, to August 9, 2002.
3. Indiscernible photocopied document.
4. Poor copy of applicant's Maryland ID card, indicating a possible issue date of October 8, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on September 13, 2006.

On appeal, the applicant reasserts her claim, but does not submit any additional evidence.

The documents listed at No. 1 above are so lacking in information that they are not sufficiently relevant to qualify as credible evidence. The documents seem to be two different letters addressing primarily the same function, making payments of some sort. The letters do not detail what the payments are for, for what duration or period such payments would cover, are unsigned and not on any sort of letterhead. These letters are rejected as authentic evidence and will not be given any weight in these proceedings. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The document listed at No. 2, above, is suspicious in nature, as the photocopy is very poor, but it appears to have copy lines around boxes of the information contained therein, indicating potential fabrication. Other indications, such as different fonts and lettering size, and the lack of information which is typically present in pay stubs or employee account statements, raise suspicions about the authenticity of the document, and the document is not corroborated by any other evidence in the record such as tax returns, W-2s, services performed for the wages, or an employer verification letter. This document is rejected as authentic evidence. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The documents listed at No. 3 above is of such poor quality photocopying that no relevant, probative information can be obtained in support of the applicant's assertions. This document will not be given any weight in these proceedings.

The ID card submitted by the applicant, which is also a barely discernible photocopy, is not sufficiently probative on the applicants residence during the entire required period, nor is it probative of the applicant's continuous physical presence in the United States.

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. 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 TPS 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 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.