

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

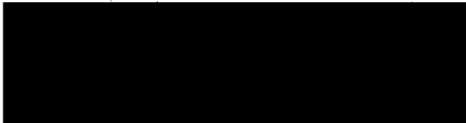
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

M1

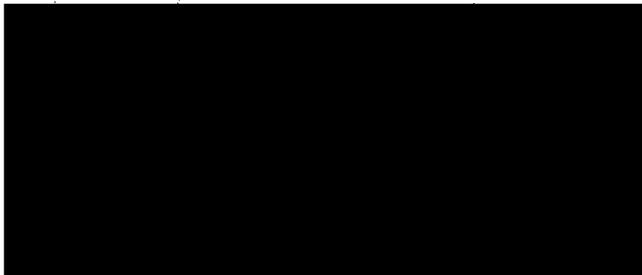


FILE: A94 763 570
[EAC 05 155 83377]

Office: VERMONT SERVICE CENTER

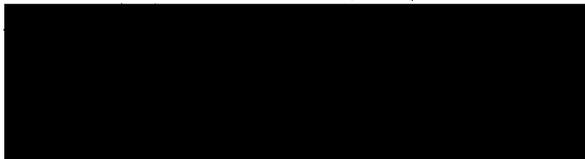
Date: DEC 07 2007

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 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 that she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite time periods.

On appeal, counsel asserts the applicant's claim of eligibility for TPS.

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. A subsequent extension of the TPS designation has been granted with validity until March 9, 2009, 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 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 reveals that the applicant filed her first TPS application subsequent to the initial registration period under CIS receipt number EAC 03 240 51923. The director denied that application on May 24, 2004, because the applicant failed to establish her eligibility for late registration and her qualifying continuous residence and continuous physical presence in the United States as required. The applicant did not appeal the director's May 24, 2004 decision.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that applicant filed the current Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS), on February 7, 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 June 15, 2006, the applicant was sent, to her last known address, a Notice of Intent to Deny requesting that she 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 residence and physical presence in the United States. The applicant failed to respond to the director's request for evidence.

The director determined that the applicant had failed to establish that she was eligible for late registration and denied the application on April 17, 2007.

On appeal, counsel states that the applicant is eligible for late registration because she is married to a TPS registrant. Counsel submits a copy of the applicant's El Salvadoran birth certificate with English translations, a copy of the applicant's El Salvadoran marriage certificate, and a copy of her husband's TPS approval notice.

The applicant has submitted sufficient evidence to establish that she is eligible for late registration as a spouse of a TPS registrant. The applicant's birth certificate shows that she was born in El Salvador. Her marriage certificate shows that she was married to [REDACTED] in El Salvador on January 28, 1997. The copy of the applicant's husband's TPS approval notice is dated November 10, 2004, and the record of proceedings shows that he was granted an extension on January 25, 2007. The applicant has submitted sufficient evidence to meet the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision with respect to this issue will be withdrawn.

The second issue in this proceeding is 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.

The applicant initially submitted the following documentation:

1. Copies of two handwritten receipts dated November 1, 2000, and April 1, 2001;
2. A copy of a pay statement from [REDACTED] dated August 16, 2002, and bearing the applicant's name as employee;
3. A copy of a statement from [REDACTED] dated June 23, 2003, and bearing the applicant's name as patient;
4. A copy of a billing statement from [REDACTED] with a service date of February 24, 2003, and bearing the applicant's name as patient;
5. A copy of an earnings statement from [REDACTED] dated September 12, 2003, and bearing the applicant's name as employee;
6. An affidavit from [REDACTED] in which she stated that she has known the applicant since July 15, 2000, and that the applicant has been cleaning her apartment since August 5, 2000; and,
7. A letter from [REDACTED] in which he stated that the applicant has been living in his house at [REDACTED], New Jersey since October 2, 2000.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on April 17, 2007.

On appeal, counsel states that the applicant has resided in the United States since 2000, and has presented sufficient evidence to substantiate such claim. Counsel resubmits on appeal copies of the [REDACTED] affidavit and the letter written by [REDACTED]

The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. The record of proceedings show that the applicant's husband, [REDACTED], A file number [REDACTED] stated on his Form I-821, Application for Temporary Protective Status, Part 3, dated March 30, 2002, that he was married to the applicant, and that the applicant's residence was [REDACTED] in San Salvador, not the United States. 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 applicant has failed to submit any objective evidence to explain or justify the inconsistencies. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

There has been no corroborative evidence submitted to support the handwritten receipts provided by the applicant. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as 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 and physical presence in the United States. The applicant claims to have lived in the United States since October of 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these 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 submitted a copy of an affidavit written by [REDACTED], and a letter written by [REDACTED], in an effort to establish her residence and physical presence in the United States during the requisite time periods. Although the writers state that they have known the applicant to be present in the United States since July and October of 2000, there has been no corroborative evidence to substantiate their assertions. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States.

All other evidence submitted by the applicant is dated subsequent to the requisite time periods, and cannot therefore satisfy the continuous residence and continuous physical presence 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 be affirmed.

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



ORDER: The appeal is dismissed.