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U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 07 118 50848]

Office: VERMONT SERVICE CENTER

Date: DEC 07 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC) denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of El Salvador who seeks 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 failed to establish she had continuously resided in the United States since February 13, 2001, and, had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts that she filed her application during the initial registration period and has been properly re-registering every year. She submits additional documentation in support of her claim.

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.

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 Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension valid 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 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 record reflects that the applicant filed her initial application on June 25, 2001 – during the initial registration period. In support of her application, the applicant submitted her birth certificate, and, an unnotarized letter from an individual who knows the applicant personally. The application was rejected because the check used to pay the fee for the application bounced and the applicant failed to respond to the director's request for proper payment.

The applicant did not re-file during the initial registration period. Instead, she filed an application for re-registration on November 12, 2003. The director accepted it under the late initial filing provisions of 8 C.F.R. 244.2(f). On March 16, 2004, the director requested that the applicant submit evidence to establish eligibility to register for TPS under the late initial filing provisions, and, to establish her qualifying continuous physical presence in the United States. In response, the applicant submitted her New York state identification card, issued on December 20, 2001; the birth certificate of her child, born on December 25, 2001, in the Town of Islip, New York; a letter from Petrona Carmen Nieves; and several unidentified receipts.

On June 21, 2004, the director concluded that the applicant had established her identity, nationality, and her qualifying continuous residence and continuous physical presence. The director denied the application, however, for her failure to establish eligibility for late initial registration. Only those who have been granted TPS can re-register for it. The applicant no longer had a pending TPS application and was not eligible to re-register or for late initial registration. The applicant filed an appeal of that decision with the AAO. On October 3, 2005, the AAO affirmed the director's decision and dismissed the appeal.

On February 10, 2005, the applicant filed a subsequent application for re-registration. On October 18, 2005, the director again denied the application because the applicant had never been granted TPS.

On March 23, 2007, the applicant filed the current application. The director accepted it under the late filing provisions of 8 C.F.R. 244.2(f). On May 11, 2007, the director denied the application, finding that the applicant

failed to establish eligibility for late initial registration and failed to establish her qualifying continuous residence and continuous physical presence.

On appeal, the applicant reasserts that she is eligible for TPS. In addition to previously submitted documents, the applicant submits the identification page of her Salvadoran passport, issued on March 9, 2001, in San Salvador, El Salvador.

None of the documentation submitted overcomes 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 the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground will be affirmed.

Furthermore, the documentation submitted by the applicant fails to establish her qualifying continuous residence and continuous physical presence. The notarized letters submitted by the applicant can be given little weight and are of little probative value as they do not provide the affiants' addresses, dates and places of birth, relationship to the applicant, or full information and/or complete details relating to the applicant's continuous residence and continuous physical presence, as required by 8 C.F.R. § 244.9(a)(2)(vi).

The earliest proof of residence and physical presence is the applicant's initial, rejected TPS application, filed on June 25, 2001. All the other documents submitted show residence and physical presence after June 25, 2001. The applicant claims to have lived in the United States since June 23, 2000. It is reasonable to expect that she would have a variety of contemporaneous evidence to support the affidavit she submitted; however, no such evidence has been provided. The AAO notes that the applicant's Salvadoran passport, submitted on appeal, was issued to her on March 9, 2001, in San Salvador, El Salvador. This contradicts her assertion that she entered the United States on June 23, 2000. 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 inconsistency regarding her date of entry. The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence and continuous physical presence in the United States. 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 conclusion that she had established her qualifying continuous residence and continuous physical presence will be withdrawn.

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 that burden.

ORDER: The appeal is dismissed.