

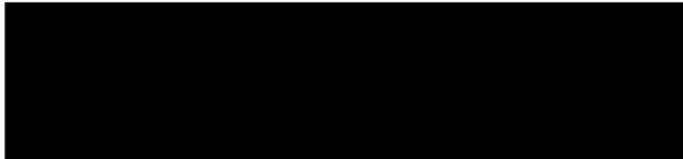


U.S. Citizenship
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 17 2007
[WAC 05 221 87307]

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 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 had failed to establish that she was eligible for late registration.

On appeal, the applicant submits a statement and evidence previously furnished and contained in the record.

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, 2007, 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 May 9, 2005.

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 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).

In a Notice of Intent to Deny (NOID) dated March 6, 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). She was also requested to submit evidence to establish nationality and identity, and evidence of 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.

The director noted that the evidence submitted by the applicant, in response to the NOID, was insufficient to establish eligibility for TPS because she failed to include evidence to establish that she met the requirements for late registration; therefore, the director denied the application on May 12, 2006.

On appeal, the applicant asserts that she filed an initial TPS application in 2001 but that she did not receive any verification as to the initial application, and that she has continued to re-register to maintain her continuous status.

The record, however, contains no evidence that the applicant did, in fact, file an initial TPS application in 2001 as claimed. Nor did the applicant furnish evidence to corroborate her claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

It is noted that the applicant submitted, with the initial TPS application, a "Request Derivative Status for Spouse" dated March 3, 2005, from [REDACTED] file number [REDACTED]. Mr. [REDACTED] indicated on this statement that he has been granted TPS, that he and his wife (the applicant) did not think that it was necessary to obtain a work permit for her, that she failed to file her application within the statutory period allowed due to a financial situation she was going through at the time, and that she failed to timely file her application for registration as a direct result of not believing that she would be needing it. He further indicated that the applicant is eligible for late filing, and that she is legally entitled to request benefits under his qualifying initial registration application.

While regulations may allow spouses of aliens who are TPS-eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS.

Mr. [REDACTED] file [REDACTED] was reviewed, and indicates that he was granted TPS on March 15, 2002. His initial TPS application (Form I-821), filed on May 10, 2001, listed the name of his spouse, [REDACTED] and stated that they were married in El Salvador on November 27, 1999, and that she and their two children [REDACTED] and [REDACTED] resided in El Salvador. Forms I-821, filed with Forms I-765 (Applications for Employment Authorization) on July 10, 2001 and on September 26, 2002, also listed the applicant as his spouse and indicated that the applicant and their two children are residing in El Salvador. Additionally, on the Form I-821 filed on February 11, 2005, Mr. [REDACTED] indicated "N/A" [not applicable] on Part 3 [Information about your spouse and children (if any)]. The record also indicates that Mr. [REDACTED] claimed to have been residing in New York since the initial registration period to the present time. There is no evidence in the record that he had ever resided in California. Likewise, it is noted that the applicant claimed to have been residing in California; there is no evidence in the record that she had ever resided in New York.

It is further noted that rather than affirming or reiterating her initial claim of eligibility for late registration based on her husband's TPS status, the applicant now claims on appeal, and also when she responded to the director's NOID, that she had filed an initial TPS application during the month of May 2001. As noted above, there is no evidence in CIS records that the applicant did, in fact, file a TPS application during the initial registration period for El Salvadorans. Additionally, there is no evidence in the record that the applicant and Mr. [REDACTED] remain married, and that she met the qualification of a spouse of an alien currently eligible to be a TPS registrant described in 8 C.F.R. § 244.2(f)(2).

Accordingly, the applicant has failed 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 decision to deny the application on this ground will be affirmed.

The second issue in this proceeding is whether the applicant has established her identity.

In a notice of intent to deny dated March 6, 2006, the applicant was requested to submit evidence establishing her nationality and identity. In response, the applicant submitted a copy of her birth certificate with English

translation, and a copy an El Salvadoran passport issued to the applicant at Los Angeles, California, on January 24, 2004.

The applicant has, therefore, overcome this ground for denial.

The third issue in this proceeding is whether the applicant has established her 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.

The applicant claimed to have entered the United States on May 10, 2000. Because no evidence was furnished to establish continuous residence and continuous physical presence, the applicant was requested on March 6, 2006, to submit additional evidence. In response, she submitted:

1. A statement from [REDACTED] indicating that he has personally known the applicant since her arrival in the United States in August 2000.
2. A statement from [REDACTED] indicating that she has personally known the applicant since approximately June 2000, and that the applicant has occasionally worked as her housekeeper.

The director noted that the evidence furnished, in response, was insufficient to establish eligibility for TPS and denied the application on May 12, 2006. On appeal, the applicant resubmits the statements listed as Nos. 1 and 2 above. She also submits:

3. A copy of a statement from the Pastor (name illegible) of [REDACTED] Los Angeles, California, indicating that according to church records, the applicant is an active member of the Parish Community and attends church services.
4. Copies of two invoices from Childlife Nutrition for Kids, Marina del Rey, California, for purchase of "Multi Vitamin & Mineral" dated November 28, 2000 and February 22, 2001.

The statement from Mr. [REDACTED] and Ms. [REDACTED] (Nos. 1 and 2 above) are inconsistent. While Mr. [REDACTED] acknowledged her acquaintance with the applicant since she arrived in August 2000, Ms. [REDACTED] indicated that the applicant has occasionally worked for her since approximately June 2000. Further, neither of the statements listed the applicant's address in the United States during their acquaintance, nor were the statements notarized. The statement from the pastor (No. 3 above) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically the pastor failed to show inclusive dates of the applicant's membership at the church, nor did he explain the origin of the information to which he attests, and how he knows the applicant.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the affidavits provided by the applicant were not supported by any other corroborative evidence.

Additionally, the statements furnished, including the invoices listed in No. 4 above, appear to be not credible and greatly reduce the credibility of other documents contained in the record of proceeding. It is noted that the invoice dated November 28, 2000, appears to have been altered as the original name and address on the document seems to have been covered-over and the applicant's name and address have been inserted in their place.

Furthermore, as noted above (in Mr. [REDACTED] file), it appears that the applicant was not in the United States during the period required to establish eligibility. Therefore, she could not have met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(a) and (b). Accordingly, 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.