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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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[REDACTED]

FILE:

[REDACTED]

and

[REDACTED]

Office: Vermont Service Center  
*consolidated herein*

Date: JUL 19 2007

[SRC 04 001 53828]

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 California Service Center. 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 application was denied by the Director, Texas 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 applying for 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 he was eligible for late registration.

On appeal, the applicant provides additional evidence in support of his eligibility for TPS 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 designated by the Attorney General is eligible for TPS 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 section 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 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 by the Secretary of the Department of Homeland Security, with validity until September 9, 2007, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on September 18, 2003.

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).

On January 13, 2004, the applicant was requested to submit evidence to establish his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, the applicant submitted a copy of his marriage certificate reflecting that he married [REDACTED] on September 26, 2002, in Plano, Texas, and a copy of his spouse's employment authorization document. The director determined that the applicant had failed to establish his eligibility for TPS late registration and denied the application on December 10, 2004. The director noted in her decision to deny that the applicant had to be married during the initial registration period from March 9, 2001 to September 9, 2002.

On appeal, the applicant states that he had been living with his spouse since July 1997 and that they have two children born before February 13, 2001. The applicant also submits copies of the birth certificates of his children born in the United States on December 20, 1997, and July 15, 2000.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

Under the provisions of the Texas Family Code a common-law marriage may be shown by establishing three factors: (1) an agreement by the parties to be married, (2) living together in Texas after the agreement is made, and (3) representation to others by the parties that they are married. *Matter of Garcia*, 16 I&N Dec. 623, 624 (BIA 1978). The applicant has failed to provide any evidence to establish that any of these factors have been met. Therefore, this record of informal marriage cannot be accepted for purposes of this application.

A review of the record of proceedings reflects that the applicant submitted a copy of his marriage certificate indicating that he was married to [REDACTED] on September 26, 2002, in Plano, Texas. In order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). Since the applicant, during the initial registration period, was not the spouse of an alien currently eligible to be a TPS registrant, he is not eligible for late registration. As such, the applicant has not established that he has met one 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 for TPS late registration will be affirmed.

Although not addressed by the director, the record of proceedings contains a Federal Bureau of Investigation report reflecting the following arrests:

- (1) On June 27, 1998, the applicant was arrested by the Mesquite Police Department and charged with "Driving While Intoxicated;" and,
- (2) On September 9, 2000, the applicant was arrested by the Richardson Police Department and charged with "Driving While Intoxicated."

The record does not contain a final court disposition for the applicant's arrest as detailed in No. 2 above; therefore, CIS must address this arrest and/or conviction(s) in any future decisions or proceedings.

It is noted that a review of the record of proceedings reveals that the applicant was encounter by immigration officials at the Dallas County Jail on May 19, 1999. The record also reveals that the applicant stated to the immigration officials that he is a native and citizen of Mexico. It is further noted that the applicant had been ordered removed from the United States to Mexico on two separate occasions dated February 1, 1996, and again on June 3, 1999.

An alien shall not be eligible for TPS if the Attorney General finds that the alien was firmly resettled in another country prior to arriving in the United States. Sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(vi) of the Immigration and Nationality Act (the Act).

As defined in 8 C.F.R. § 208.15, an alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(a) That his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country; or

(b) That the conditions of his or her residence in that country were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge shall consider the conditions under which other residents of the country live; the type of housing, whether permanent or temporary, made available to the refugee; the types and extent of employment available to the refugee; and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation that includes a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

The burden of proof is upon the applicant to establish that he 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 this burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

A review of the record of proceedings reflects that the applicant has not provided any evidence to establish that he had resided in El Salvador prior to entering into the United States. The burden of proof is upon the applicant to establish that he meets the above requirements. Consequently, the application must 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 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.