



U.S. Citizenship  
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FILE: [EAC 04 066 50540]

Office: VERMONT SERVICE CENTER

Date: JUN 05 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 record reveals that the applicant filed a TPS application during the initial registration period under CIS receipt number EAC 01 194 50938. The director denied that application on July 1, 2003, because the applicant failed to respond to the director's request for evidence. The applicant did not appeal the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 3, 2004.

The director denied the application on July 14, 2004, because the applicant failed to establish her eligibility for late registration.

The applicant appealed the director's decision on July 30, 2004. The AAO determined that the applicant had submitted sufficient evidence to establish her eligibility for late registration, being married to a TPS registrant. However, the AAO remanded the case to the service center because there was insufficient evidence found in the record to establish that the applicant 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. The service center denied the TPS application on May 9, 2006, because the applicant had failed to submit evidence to demonstrate her continuous residence and continuous physical presence in the United States.

On appeal, the applicant asserts her 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.

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. An extension of the program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. 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 applicant submitted the following documentation subsequent to the director's initial denial dated July 14, 2004:

1. A copy of the applicant's United States Social Security Card;
2. A copy of the applicant's El Salvadoran passport issued in the United States on March 22, 2000;
3. A copy of the applicant's Virginia Identification Card issued to her on April 7, 2001;
4. A retail receipt bearing the applicant's name as customer and dated October 12, 2000;
5. A copy of a pay statement from [REDACTED] Inc. dated October 7, 2001, and bearing the applicant's name as employee;
6. A copy of a pay statement from [REDACTED] Inc. dated September 20, 2002, and bearing the applicant's name as employee;
7. A copy of a letter addressed to the applicant from the Social Security Administration and dated July 3, 2001; and,
8. A letter from the Pastor and Elder of the [REDACTED] Church located in Alexandria, Virginia, in which it is stated that the applicant has been an active member of the church since January 11, 1999.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on May 9, 2006.

On appeal, the applicant reasserts her claim of eligibility for TPS and submits the following documentation:

9. An affidavit from the applicant's husband in which he stated that the applicant has been attending the [REDACTED] Church since October of 1999, and that the church elders made a mistake in their letter;
10. An affidavit from [REDACTED] in which he stated that he was a member of the [REDACTED] Church and that the applicant became a member of the church in October of 1999, and that he remembers specifically because the church's anniversary was in November of that same year;
11. A copy of a pay statement from [REDACTED], Inc. bearing the applicant's name as employee and dated November 17, 2001; and,
12. A copy of a pay statement from [REDACTED], Inc. dated November 2, 2001, and bearing the applicant's name as employee.

The applicant has not submitted sufficient evidence to establish her qualifying residence and physical presence in the United States during the requisite time periods. The applicant initially submitted a letter written by the pastor and church elder of the [REDACTED] Church in which it was stated that the applicant had been an active member of the church since January 11, 1999. In the AAO's decision to remand dated January 26, 2006, it was noted that the date specified in the letter is prior to the applicant's claimed entry into the United States in October of 1999. On appeal, the applicant submits an affidavit from her husband and an acquaintance who stated that the applicant became a member of the [REDACTED] Church in October of 1999. This contradictory evidence is insufficient to alter the decision made by the AAO in its January 26, 2006 decision. 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 contradictions.

The affidavits from the applicant's husband and [REDACTED] have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the affiants are not representatives of the [REDACTED]

All other evidence that was submitted by the applicant is either dated prior to or subsequent to the requisite time periods in question. The applicant has failed to establish that she has met 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 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.