

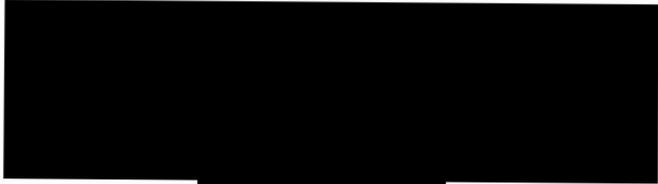


U.S. Citizenship
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FILE: [REDACTED]
[EAC 05 226 74397]

OFFICE: Vermont Service Center

DATE: MAY 14 2007

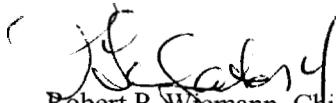
IN RE: Applicant: [REDACTED]

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, Vermont Service Center (VSC). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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 on the grounds that the applicant failed to establish that she was eligible for late registration, that she had been continuously physically present in the United States from March 9, 2001, until the date of filing, and that she had resided continuously in the United States since February 13, 2001.

On appeal counsel asserts that the applicant qualifies for late TPS registration through her husband and that she meets the continuous residence and physical presence requirements for TPS applicants from El Salvador. Additional documentation is submitted in support of these contentions.

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 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.

Persons applying for TPS offered to El 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.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she satisfied at least one of the criteria enumerated in 8 C.F.R. § 244.2(f)(2) above.

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. *See* 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. *See* 8 C.F.R. § 244.9(b).

The record shows that the applicant filed her initial Form I-821, Application for Temporary Protected Status, on September 11, 2002 – two days after the close of the initial registration period. On April 7, 2003, the director sent the applicant a notice of intent to deny, requesting the submission of evidence within 30 days that the applicant was eligible for late TPS registration under the provisions of 8 C.F.R. § 244.2(f)(2) and (g), and that she had been continuously physically present in the United States from March 9, 2001, to the date her application was filed. After the applicant failed to respond to the request for evidence the director denied the application on the ground of abandonment on July 1, 2003. On December 29, 2003, the applicant filed a second Form I-821, which the Director, VSC, treated as another initial application for TPS. That application was likewise denied, on July 26, 2004, on the ground that the applicant failed to provide requested evidence that she was eligible for late TPS registration, that she was an El Salvadoran national, and that she met the continuous residence and physical presence requirements for TPS applicants from El Salvador. A subsequent appeal, received at the VSC on September 1, 2004, was rejected on October 6, 2004, because it was not filed within the 33-day time period prescribed in the regulations.

The current Form I-821 was filed on March 13, 2005, and designated by the applicant as a re-registration application. The director treated it as another initial application for TPS, and sent the applicant a notice of intent to deny on April 17, 2006, requesting the submission of evidence that she met one of the qualifying conditions for late TPS registration enumerated in 8 C.F.R. § 244.2; that she is an El Salvadoran national, that she resided in the United States as of February 13, 2001, and that she was physically present in the United States from March 9, 2001, to the date of filing. The applicant responded with some additional documentation on May 30, 2006. The director denied the application on July 12, 2006, finding that while the evidence submitted by the applicant

established her El Salvadoran nationality, it did not establish that she was eligible for late TPS registration or that she had been continuously resident in the United States since February 13, 2001, and continuously physically present in the country from March 9, 2001, until the date of filing.

On appeal the applicant asserts that she is eligible for late TPS registration through her marriage to a TPS registrant [redacted] and submits additional documentation of her residence and physical presence in the United States. As evidence of her marriage relationship, the applicant submits photocopies of a marriage certificate, indicating that the applicant and [redacted] were married in El Salvador in 1994 and the birth certificates of two children, born in El Salvador in 1995 and 1998, which identify Mr. [redacted] and the applicant as the parents. Citizenship and Immigration Services (CIS) records show that [redacted] [Alien # [redacted]] filed a TPS application with the Vermont Service Center during the initial registration period on August 13, 2001, and that the application was approved on May 13, 2004. Based on the entire record, however, the AAO determines that the applicant has not established her eligibility for late TPS registration as the spouse of Mr. [redacted].

The AAO notes that Mr. [redacted] who stated in his initial application that he entered the United States in October 1999, claimed in his initial TPS application and in an Application for Employment Authorization (Form I-765) filed at the same time in August 2001, that he was single. In subsequent employment authorization and TPS re-registration applications filed in October 2002, September 2003, and May 2005, Mr. [redacted] continued to identify himself as single. Likewise, the applicant identified herself as single in all of her TPS applications and accompanying employment authorization applications filed between September 2002 and March 2005. Not until the appeal brief was filed on the current application in September 2006 did the applicant claim to be married to [redacted]. The AAO also notes, based on the evidence in their respective files, that the applicant did not always share the same address as Mr. [redacted] during the years 2002 to 2006. In September 2003 the applicant and Mr. [redacted] signed separate TPS re-registration applications three days apart (Mr. [redacted] on September 12 and the applicant on September 15) which identify different addresses for each. Curiously, the TPS application filed by [redacted] in September 2003 was prepared by a [redacted] who identifies his (or her) address as [redacted] in Manassas, Virginia, which was the same address claimed by the applicant and [redacted] in the separate TPS applications they filed the previous year, in September and October 2002.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). No such competent evidence has been submitted by the applicant to explain the foregoing inconsistencies and, in particular, why neither the applicant or [redacted] claimed to be married to the other before September 2006. Moreover, doubt cast on any aspect of the applicant's evidence reflects on the reliability of the petitioner's remaining evidence. See *id.* The AAO concludes that the applicant has failed to establish that she is eligible for late initial TPS registration as the spouse of a currently eligible TPS registrant, in accordance with the qualifying condition at 8 C.F.R. § 244.2(f)(2)(iv). Accordingly, the director's denial of the application will be affirmed on this ground.

Nor would the applicant be eligible for TPS if the current Form I-821 were treated as a re-registration application, as designated in the Form I-821. Only those individuals who are granted TPS are required (or eligible) to re-

register annually. In this case, since the applicant has not been previously approved for TPS, she is not eligible to re-register for TPS.

Furthermore, the evidence of record does not establish that the applicant meets the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador. The applicant identifies three different dates of entry into the United States in her three TPS applications – May 6, 2000 (on the first), May 16, 2001 (on the second), and May 16, 2000 (on the third). Almost all of the documentation she has submitted in the current proceeding as evidence of her residence and physical presence in the United States, however, dates from 2005 and 2006, and none of it dates prior to November 2002. In earlier proceedings, the applicant submitted four letters in 2004 from acquaintances in the United States, three of whom claim to know her since 2001 and the other of whom claims to know her since 1999. These acquaintances provide no information about where the applicant lived and other details of her life in the United States, and do not even confirm that they met her in the United States. Moreover, letters from acquaintances are not, by themselves, persuasive evidence of an alien's continuous residence and continuous physical presence in the United States. With her initial TPS application the applicant submitted photocopies of a passenger receipt from [REDACTED] in her name, dated May 19, 2000 (which does not identify the flight cities), and a bank receipt for a money order from the applicant to a recipient in El Salvador, dated December 21, 2000, which identifies the applicant's address as located in Manassas, Virginia. There are no documents in the record that date between December 2000 and September 2002. The AAO concludes that the evidence submitted by the applicant fails to establish that she was continuously physically present in the United States from March 9, 2001, until the date of filing, and that she has been a continuous resident of the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c).

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.