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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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*M*

[REDACTED]

FILE: [REDACTED]  
[EAC 07 013 70451]

Office: VERMONT SERVICE CENTER

Date: NOV 05 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:

[REDACTED]

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 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 of proceedings reveals that the applicant filed a TPS application on July 9, 2001, under CIS receipt number EAC 01 226 60328. The director denied the TPS application on November 4, 2002, due to abandonment, because the applicant failed to respond to the director's request for evidence. The applicant filed a motion to reopen on November 7, 2003. The director rejected the motion on June 24, 2004, as having been filed untimely. The applicant filed another motion to reopen on September 9, 2004. The director rejected that motion on December 22, 2004, because it had also been filed untimely.

The record also shows that the applicant filed a TPS application on April 8, 2005, under CIS receipt number WAC 05 190 70829, and indicated that she was re-registering for TPS. The director denied the re-registration application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The applicant filed an appeal to the AAO on September 15, 2005. The Director, AAO dismissed the appeal on May 8, 2006, also stating that the applicant was not eligible for re-registration.

The director denied the current TPS application because the applicant failed to establish that she was eligible for late registration, and had failed to establish her identity or nationality. The director also found that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods.

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.
- (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. A subsequent extension of the TPS designation has been granted with validity 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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS), on October 13, 2006.

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

The director determined that the applicant had failed to establish that she was eligible for late registration and denied the application on February 21, 2007.

On appeal, the applicant states that she qualifies for late registration in that she had an initial TPS application pending that was subject to further review as of September 9, 2002.

The applicant has not submitted sufficient evidence to establish that she qualifies for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2) and (g). The applicant's assertion, that she would qualify for late initial registration because a "pending" Form I-821 filed during the initial registration period would constitute an application pending for relief from removal during the initial registration period, is not persuasive. While Temporary Protected Status may confer benefits that temporarily delay the alien's removal, the temporary benefits of Temporary Protected Status do not equate to "relief from removal" obtained through an adjustment of status, cancellation of removal, discretionary relief, recommendation against deportation, or suspension of deportation. The provisions for late registration were created to ensure that Temporary Protected Status benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations.

Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). The applicant has failed to establish her eligibility for late registration. Consequently, the director's decision to deny the application for this reason will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

The applicant initially provided the following documentation:

1. A copy of a letter from [REDACTED] of [REDACTED] in which she stated that the applicant has been employed by the company since February 13, 2001;
2. Copies of Western Union money receipts dated February, March, April, and May of 2001;
3. A copy of an Urgente Express letter dated March 26, 1999; and,

4. Copies of U.S. Postal Service money receipts dated April 17, 2001, July 26, 2002, and August 19, 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on February 21, 2007.

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

5. A copy of a Western Union money receipt dated August 14, 2001; and,
6. A copy of a pay statement from the [REDACTED] naming the applicant as employee and dated October 15, 2001.

The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. The letter from the Indian [REDACTED] in No. 1 above appears to have been altered as the original employment date seems to have been covered-over and a new date has been typed in its place. 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 apparent alteration of the document in No. 1 above.

The copies of the money order receipts provided by the applicant (see number 2, 3, 4, and 5 above) are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as money order receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since 1997. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

The Urgente Express letter is dated prior to the requisite time periods. A single pay statement dated after the requisite time periods is not sufficient evidence to establish residence and physical presence.

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 this reason will also be affirmed.

A third issue is whether the applicant has submitted sufficient evidence to establish her identity and nationality.

Persons applying for TPS offered to El Salvadorans must demonstrate that he or she is a citizen or national of a state designated under section 244(b) of the Act.

The regulations at 8 C.F.R. § 244.9 state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The director denied the TPS application on February 21, 2007, after determining that the applicant had failed to submit evidence of her identity and nationality.

On appeal, the applicant claims her eligibility for TPS and submits copies of her El Salvadoran birth certificate with English translations, and El Salvadoran passport.

There has been sufficient evidence submitted to establish the applicant's identity and nationality. 8 C.F.R. § 244.2(a)(1). The applicant submitted a copy of her El Salvadoran birth certificate with English translations, and a copy of her El Salvadoran passport. Consequently, the director's decision to deny the TPS application on this ground will be withdrawn. However, the TPS application will be denied because the applicant has failed to

demonstrate her eligibility to file as a late registrant, and because she has failed to submit sufficient evidence to establish continuous residence and continuous physical presence in the United States during the requisite time periods.

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.