



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 03 231 55966]

OFFICE: VERMONT SERVICE CENTER

DATE:

OCT 17 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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, and that she had continuously resided in the United States since February 13, 2001.

On appeal, the applicant submits a statement and additional evidence.

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. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, with validity until March 9, 2009, 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. To qualify for late registration, the applicant must provide evidence that during the initial registration period, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record shows that the applicant did file an initial application for TPS during the initial registration period on May 14, 2001 (EAC 01 196 54157). The director denied that application on September 5, 2002, after determining that the applicant had abandoned her application by failing to respond to a request for evidence. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed a subsequent Form I-821 application on July 30, 2003 (EAC 03 231 55966) [in addition to another Form I-821 filed in 2002]. The director denied this application because it was filed outside of the initial registration period and the applicant had failed to establish her eligibility for filing under the provisions of late registration.

In a notice of intent to deny dated August 27, 2003, 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). The applicant also was requested to submit evidence of her continuous physical presence and continuous residence during the requisite periods. In response, the applicant submitted evidence to establish continuous residence and continuous physical presence; however, she neither addressed nor submitted any evidence to establish eligibility for late registration. Therefore, the director denied the application on July 29, 2004.

On appeal, the applicant asserts that she is married to an El Salvadoran currently eligible for TPS. She submits a copy of the Employment Authorization Card issued to [REDACTED] on October 9, 2003, indicating that Mr. [REDACTED] was granted TPS (category A12 - under record [REDACTED]). She also submits a copy of a State of Maryland Marriage License issued to the applicant and [REDACTED] on March 31, 2000, and a copy of a State of Maryland Certificate of Marriage indicating that the applicant and [REDACTED] were married on April 9, 2000.

A review of the applicant's CIS file indicates that during the initial registration period and subsequent TPS re-registrations (Form I-821 and Form I-765), the applicant had claimed that her "marital status" was "single." She listed her address as [REDACTED] Silver Spring, MD 20904, on the initial registration filed on May

14, 2001, and all other documentation dated from 2001 through 2003. She also listed her address during 2002 and 2003 as [REDACTED] and also [REDACTED]

[REDACTED] It is further noted that on the Form 1040, Income Tax Returns (for the years 2001, 2002, and 2003), the applicant's filing status was "head of household" and claimed her son [REDACTED] as her dependent. The applicant's spouse was not listed on the Form 1040.

The file of [REDACTED]s (the applicant's spouse) was also reviewed. [REDACTED] indicated on his initial TPS application, filed on February 13, 2001, that his "marital status" was "single," and that he resided at [REDACTED]. Subsequent filings of Forms I-821 and Forms I-765, including Form I-131 (Application for Travel Document), indicate that the applicant had claimed he was "single" and he resided at [REDACTED]. Only when he filed a TPS re-registration on February 9, 2005, did [REDACTED]s claim that he is married to the applicant; however, he listed his address as [REDACTED]. It is noted that the applicant did not claim that she resided at any of the addresses listed as [REDACTED] residence; likewise, [REDACTED] did not claim that he resided at any of the addresses listed as the address of the applicant.

While the record indicates that the applicant and [REDACTED] were married on April 9, 2000, prior to the initial registration period, there is no evidence in the record to establish that during the initial registration period, from March 9, 2001, through September 9, 2002, the applicant and her spouse remain married.

Accordingly, the applicant has failed to establish that she has met the criteria for late initial registration described in 8 C.F.R. § 244.2(f)(2)(iv). Therefore, the director's decision to deny the application on this ground will be affirmed.

The next issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001.

In a notice of intent to deny dated August 27, 2003, the applicant was requested to submit evidence establishing continuous residence and continuous physical presence during the requisite period. The director noted that in response, the applicant submitted documents dated in 1999, and a copy of [her son's] 1999 birth certificate issued on February 21, 2001. She concluded that the evidence submitted indicates that the applicant had been continuously physically present in the United States from March 9, 2001, to the date of filing. However, the director stated that the applicant had not submitted sufficient evidence to establish that she had continuously resided in the United States as of February 13, 2001. Therefore, the director denied the application on July 29, 2004.

On appeal, the applicant asserts that she has been residing continuously in the United States since December 12, 1998, and that she has not left this country since the date of her arrival. She submits:

1. Copies of her payroll statements from [REDACTED], Silver Spring, Maryland, dated from February 2, 2001 to October 4, 2002, inclusive.
2. Copies of Forms W-2, Wage and Tax Statements, for the tax years 2001, 2002, and 2003.
3. Copies of Forms 1040, U.S. Individual Income Tax Returns, for the tax years 2001, 2002, and 2003.
4. A copy of a State of Maryland birth certificate of the applicant's son, [REDACTED] born on [REDACTED]

5. An affidavit from [REDACTED] attesting to having known the applicant since they had resided in El Salvador, that they again met in Maryland in December 2000, and that they frequently visit each other.
6. An affidavit from [REDACTED] attesting to having known the applicant since November 1999, and that they meet during church services in Silver Spring, Maryland.

The applicant has submitted sufficient evidence to establish that she has met the criteria for continuous residence in the United States since February 13, 2001. 8 C.F.R. § 244.2(c). Therefore, the director's decision to deny the application on this ground will be withdrawn. Additionally, it is noted that the applicant has also submitted sufficient evidence to establish that she has met the criteria for continuous physical presence in the United States since March 9, 2001. 8 C.F.R. § 244.2(b).

The applicant, however, is ineligible for TPS because she has failed to overcome the director's findings that she has failed to establish that she was eligible for late initial registration. 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application will be affirmed.

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.