



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY



M₁

FILE:  OFFICE: Vermont Service Center DATE: **SEP 10 2007**
[EAC 06 363 74308]

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: 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 F. 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 claims to be 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 TPS registration and that she met the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador.

On appeal the applicant asserts that she is eligible for TPS as the spouse of a currently eligible TPS registrant.

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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed her Form I-821, Application for Temporary Protected Status, on August 31, 2006 – four years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions described 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 Citizenship and Immigration Services (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).

In a Notice of Intent to Deny (NOID) dated January 15, 2007, the director requested the applicant to submit evidence that she was eligible for late registration and met the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador. The applicant responded on January 29, 2007, with assorted documentation from 2005 and 2006.

On February 21, 2007, the director denied the application on the grounds that the applicant failed to establish that she was eligible for late TPS registration and that she was continuously resident and continuously physically present in the United States from the requisite dates for El Salvador nationals.

On appeal the applicant asserts that she is eligible for TPS derivatively through her husband, [REDACTED]. CIS records confirm that [REDACTED] has been granted TPS. However, the marriage certificate submitted by the applicant indicates that she and [REDACTED] were not married until November 2005. Since the marriage relationship did not exist during the initial registration period for El Salvadoran nationals in 2001-02, the applicant is not eligible for late TPS registration through her husband under 8 C.F.R. § 244.2(f)(2)(iv). Accordingly, the director's denial of the application for failure of the applicant to establish her eligibility for late TPS registration will be affirmed.

Furthermore, even if the applicant were eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv), she must meet the same continuous residence and continuous physical presence requirements as her spouse. Since the applicant did not enter the United States until May 26, 2005, as she states on her TPS application, she was not continuously physically present in the United States from March 9, 2001, to the date she filed her TPS application (August 31, 2006), and has not been a continuous resident of the United States since February 13, 2001, as required for all TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). The director's denial will be affirmed on these grounds as well.

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.