

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M

[REDACTED]

FILE:

[REDACTED]

[EAC 07 006 71343]

OFFICE: Vermont Service Center

DATE:

SEP 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 is eligible for late TPS registration and that she was continuously resident and physically present in the United States for the required periods of time.

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.

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 since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with Citizenship and Immigration Services (CIS) on September 4, 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 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).

On February 6, 2007, the director issued a notice of intent to deny (NOID) requesting that the applicant submit evidence within 30 days to establish her eligibility for late registration, her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date her TPS application was filed. The applicant did not respond to the NOID. On March 29, 2007, therefore, the director denied the application on the grounds that the applicant failed to establish her eligibility for late TPS registration in accordance with 8 C.F.R. § 244.2(f)(2) and (g), failed to establish her continuous residence in the United States since February 13, 2001, and failed to establish her continuous physical presence in the United States from March 9, 2001, to the filing date of her TPS application.

On appeal the applicant asserts that she entered the United States at San Ysidro, California, on October 4, 2000, and has not departed the country since then. The applicant states that she has already submitted evidence of her continuous residence in the United States, and resubmits copies of those materials, which include assorted documentation from the years 2002-2007. The applicant does not address the issue of her late filing for TPS.

Thus, the record still contains no evidence that the applicant – who filed her TPS application four years after the close of the initial registration period for El Salvadoran nationals – is eligible for late registration under the

provisions of 8 C.F.R. § 244.2(f)(2) and (g). CIS records indicate that the applicant's father, [REDACTED] filed an asylum application (Form I-589) in 1995, and later filed a Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal, pursuant to the Nicaraguan Adjustment and Central American Relief Act (NACARA). On February 13, 2006, the Form I-881 was granted, while the Form I-589 was administratively closed and withdrawn. While [REDACTED] added the applicant to both applications as a dependent on November 18, 2002, that was after the close of the initial registration period for TPS applicants from El Salvador on September 9, 2002. Thus, the applicant did not meet the eligibility criterion for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii) because she did not have an asylum application pending during the initial registration period.

As for the evidence of her residence and physical presence in the United States, the earliest document in the record is the applicant's undated federal tax return (Form 1040) for the year 2001, which could not have been prepared before early 2002. Furthermore, the applicant's national identity document indicates that it was issued to her in El Salvador on April 23, 2002. Accordingly, the documentation submitted by the applicant does not show that she was continuously physically present in the United States from March 9, 2001, to the date she filed for TPS in September 2006, and that she has continuously resided in the United States since February 13, 2001, as required for El Salvadoran nationals under 8 C.F.R. § 244.2(b) and (c).

In accordance with the foregoing analysis, the director's denial of the application for TPS will be affirmed on all grounds.

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.