

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M

[REDACTED]

SEP 20 2007

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE:
[EAC 06 357 72172]

IN RE: Applicant: [REDACTED]

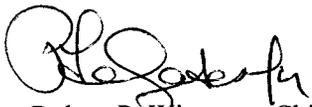
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), 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 VSC director determined that the applicant failed to establish she had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. The director also found that the applicant failed to establish she was eligible for late registration. Therefore, the application was denied on January 11, 2007. The applicant filed the current appeal from that decision on February 8, 2007.

On appeal, counsel submits a brief and additional documents.

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. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on August 28, 2006, and indicated that it was her first application to register for TPS.

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 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 VSC director determined that the applicant failed to establish her eligibility for late registration, continuous physical presence and residence in the United States during the periods required by the regulations, and denied the application.

On appeal, counsel argues on appeal that the applicant had submitted sufficient evidence to establish her continuous residence and continuous physical presence during the required periods. In the alternative, she requests that the appeal be treated as a motion to reopen the initial TPS application.

Counsel, however, failed to submit any evidence that the applicant meets the requirements for late registration as enumerated in 8 C.F.R. § 244.2(f)(2).

The applicant has submitted evidence with her TPS application and on appeal, in an attempt to establish her qualifying residence and physical presence in the United States. However, this evidence does not establish that she met those requirements. The medical records, utility bills, earnings statements, income tax forms, and money order receipts, submitted as evidence, are all dated after the periods required by the regulations.

The applicant also submitted copies of affidavits from her brother's mother-in-law, aunt, and acquaintances stating that she has been living in Canton, Ohio since April 2000. However, these affidavits are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of

contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence.

The applicant also claims that the date stamps on the back of the photographs she submitted establish that she meets the requirements of continuous physical presence and continuous residence during the periods mandated by the regulations. However, such date stamps are not reliable in the absence of corroborating documentary evidence of her residence and physical presence in the United States prior to February 13, 2001 such as employment records, earning statements, utility bills, medical records, bank statements, rental receipts, or other similar evidence.

The applicant has, therefore, failed to establish that she has met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).

Further, the applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS will be affirmed.

It is noted that the applicant previously filed a first TPS application during the initial registration period on July 16, 2002, under CIS receipt number LIN 02 239 51821. The application was denied by the Nebraska Service Center (NSC) director on January 28, 2003, due to abandonment because the applicant failed to respond to a request for evidence in connection with the application. The record does not indicate that a motion to reopen was filed by the applicant from that denial decision.

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 this burden.

ORDER: The appeal is dismissed.