

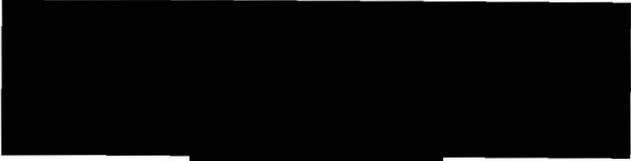


U.S. Citizenship
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FILE: [REDACTED] OFFICE: Vermont Service Center DATE: **AUG 04 2008**
[EAC 05 217 79847]

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. Wierna 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 reveals that the applicant filed her initial TPS application on April 23, 2001, under receipt number LIN 01 173 51094. The Director, Nebraska Service Center (NSC), denied that application on October 19, 2001, after he determined that the applicant had failed to establish her identity and failed to establish her continuous residence in the United States since February 13, 2001. The record does not reflect that the applicant filed an appeal of the director's decision.

On July 29, 2002, the applicant filed a second TPS application under receipt number LIN 02 251 50756. The Director, NSC, denied that application on February 27, 2003, after he determined that the applicant had failed to establish her identity and failed to establish her continuous residence in the United States since February 13, 2001. The applicant did not submit an appeal of the director's decision.

The applicant filed the current TPS application on March 4, 2005, under Citizenship and Immigration Services (CIS) receipt number EAC 05 217 79847. The Director, Vermont Service Center, denied that application on August 30, 2006 after he determined that the applicant had failed to establish her eligibility for late registration.

On appeal, counsel states that the applicant and [REDACTED] have a common law marriage recognized in the state of Colorado and their "marriage began in 2000 – 2001 when they began living together in Boulder, Colorado." Counsel further states that as proof of this relationship "in 2001, they rented an apartment together and conceived a child who was born on August 22, 2002 in Boulder, Colorado."

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.

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. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid 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 Citizenship and Immigration Services (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 initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on March 4, 2005. 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.

On March 10, 2006, 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 was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on August 30, 2006.

On appeal, counsel submits a letter claiming that the applicant is eligible for late initial registration as the common law spouse of a TPS-eligible alien. Counsel further states that the applicant and [REDACTED] made a declaration that a common law marriage was in existence between them in order that the applicant could be included on his benefit package at work.

In addition, counsel submits a State of Colorado Affidavit of Common Law Marriage between the applicant and [REDACTED], dated September 29, 2003. Counsel also submits copies of birth certificates for the applicant's children which list [REDACTED] as the father; a copy of affidavits dated October 24, 2006 from [REDACTED] and [REDACTED], attesting that the applicant has been living with [REDACTED] since 2001; and, a copy of [REDACTED]'s EAD card.

On appeal, counsel states that the applicant has lived in a common law marriage which began in 2000 to 2001. Furthermore, counsel states that in 2001, the applicant and [REDACTED] rented an apartment together. The record of proceeding does not confirm this statement since there is no corroborative evidence to support the claim. Although the record contains an Apartment Lease dated August 15, 2000, with a term of lease for one year, for the period from August 15, 2000 to August 15, 2001, the tenants of the premises are listed as [REDACTED], the applicant, and [REDACTED].

In addition, it is also noted that the applicant did not submit any documentary evidence such as a joint checking and/or savings account, joint ownership of property, the filing of joint income tax returns, or registration as husband and wife on applications, leases, or contracts. The record shows that on Form(s) I-821, Application(s) for Temporary Protected Status, signed by the applicant on April 23, 2001, July 29, 2002, and March 4, 2005, the applicant certified under penalty of perjury that she was single. The applicant also certified that she was single when she signed Form(s) I-765, Application(s) for Employment Authorization, on April 23, 2001, June 27, 2002, September 3, 2003, and March 3, 2005. The applicant has failed to explain why she repeatedly certified that she was single if she considered herself to have been in a common law marriage during this time period. It is noted that [REDACTED], also indicated that he was single on his Form(s) I-821 filed on August 6, 2001, September 9, 2002, August 25, 2003, and May 26, 2005. The applicant's current claim to have been a common law spouse of a TPS recipient since 2001 is without merit. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant, in this case, has not submitted sufficient 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 conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

Beyond the decision of the director, the record reflects that the applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001. The applicant has submitted pay stubs in the name [REDACTED] starting in August 28, 2001, and pay stubs with the name [REDACTED] dated in August and September 2000. Furthermore, the applicant furnished a statement indicating that she had worked and used the name [REDACTED] before she came to the United States. She also

indicated [REDACTED] as her other name used on her Forms I-821 submitted on April 23, 2001, and March 4, 2005. However, the applicant has not shown that she and [REDACTED] are the same person or that continuously resided in the United States since February 13, 2001, and was continuously physically present since March 9, 2001. The applicant has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the application will also be denied on this ground.

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.