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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: DEC 08 2008

[EAC 07 164 70178]

IN RE:

Applicant:



APPLICATION:

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

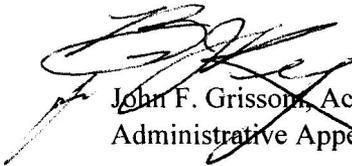
ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grisson, Acting 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 director determined that the applicant failed to establish he: 1) had continuously resided in the United States since February 13, 2001; and 2) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that he is the spouse of a TPS-eligible alien and has previously demonstrated his physical presence in the United States. The applicant also submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

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 as 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 section 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 conditions described in paragraph (f)(2) of this section.

*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.

*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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until March 9, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on March 13, 2007.

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

The record of proceeding confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On September 4, 2007, the applicant was provided the opportunity to submit evidence establishing his 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 his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant was also requested to submit proof of his marriage. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. The applicant also

submitted a copy of a registration of informal marriage dated September 26, 2007. The director determined that the document was issued subsequent to the request for evidence and is therefore of lesser value in determining the applicant's relationship. The director also found that after reviewing the applications of the applicant's alleged wife, she constantly listed herself as single. According to the director, the applicant failed to establish that a common law or informal marriage existed. Therefore, the director denied the application.

On appeal, the applicant states that he is the spouse of a TPS-eligible alien and has previously demonstrated his physical presence in the United States. The applicant also submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. The applicant also submits evidence in an attempt to establish his continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file his TPS application within the initial registration period. The applicant has not submitted any evidence to establish that he 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 failed to establish his eligibility for late registration will be affirmed.

It is noted that the applicant claims that he is the common-law spouse of a TPS-eligible alien. According to the applicant, he has submitted evidence of them having represented themselves as married. The applicant also claims that his wife filed her taxes as single because the notary that prepared the taxes advised her to do so because he did not have a Social Security number. As discussed below the applicant does submit some documentation addressed to "Mr. and Mrs." However, as pointed out by the director a finding of the existence of a common-law marriage or informal marriage is only justified if the evidence shows that the parties agreed to be married and that they lived together in Texas as husband and wife, and that they have publicly represented themselves as married. All three of these requisites must exist at the same time. The applicant has failed to demonstrate that that his common law marriage existed during the initial registration period of March 9, 2001 through September 9, 2002.

The second and third issues in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001.

As stated above, the applicant was requested on September 4, 2007 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant submitted the following documentation:

1. Copies of an Account Statement from First National Bank of Texas dated April 10, 2001, a statement from Voice Stream dated August 6, 2001, an invoice from Total Telephone Service Company dated October 4, 2001, a bill from Memorial City Emer Phys LLP dated November 10, 2005, a statement from Banco Popular dated August 9, 2007.
2. Copies of an apartment lease dated August 5, 2002 and a statement from [REDACTED] Manager of [REDACTED] Apartments dated September 27, 2007.
3. Copies of a registration from Texas State Board of Plumbing Examiners with an expiration date of June 30, 2006, a contribution envelope from Saint Jerome Church dated December 18, 2005; a letter from [REDACTED] dated February 5, 2007.
4. Copies of a letter from American Tax Insurance Agency dated April 1, 2006 and the

first page of a 2004 Form 1040A, U.S. Individual Tax Return.

5. A copy of the applicant's Salvadoran passport.

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite period and denied the application. On appeal, the applicant submits:

6. Copies of invoices from Banco Sal Inc. dated April 18, 2001, June 12, 2001, and August 16, 2001, a Texas Liability Insurance Card with an effective date of February 18, 2003, a statement from Center Medical Center dated December 10, 2003 and a Privacy Policy information sheet from Axiom Financial Services dated March 30, 2006
8. A letter from Pastor, Iglesia La Luz Del Mundo Church.

The passport establishes the applicant's identity and nationality. [REDACTED] states that the applicant and his family have been members of his church since January 16, 2001. However, this statement has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. It is further noted that the pastor did not indicate the location of his church, or establish how the pastor knows the applicant. Furthermore, the statement does not include the seal of the organization impressed on the letter or on the letterhead of the organization.

One of the Banco Sal bank statements indicates a date of April 10, 2001, and is the earliest date presented as evidence of the applicant's presence in the United States during the requisite period. Therefore the evidence presented by the applicant is of little or no probative evidence in establishing the applicant's continuous residence in the United States during the qualifying period.

The applicant has not submitted sufficient evidence to establish his qualifying residence since February 13, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence from March 9, 2001 to the filing date of the TPS application. Therefore, the application must be denied for this reason 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 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.