

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

M<sub>1</sub>

**PUBLIC COPY**



FILE:



Office: VERMONT SERVICE CENTER

Date FEB 01 2008

[EAC07 005 71471]



consolidated]

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:



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, and is now before the Administrative Appeals Office (AAO) on appeal. 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 because the applicant failed to establish she was eligible for late registration. The director also denied the application because the applicant had failed to establish her continuous physical presence in the United States during the requisite period.

On appeal, counsel asserts that the applicant has met her burden of establishing eligibility to register for the benefit being sought. Counsel states that the director failed to give any weight to the applicant's employment letter.

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.

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

The initial registration period for El Salvadorans was March 9, 2001, through September 9, 2002.

The record reflects that on February 23, 2001, Citizenship and Immigration Services (CIS) received correspondence from the applicant's mother, [REDACTED], requesting that the applicant (her daughter) be included in her pending asylum application. It is noted that the mother's application was approved on April 29, 2002, under section 203 of the Nicaraguan Adjustment and Central American Relief Act.

On August 27, 2001, the applicant filed her initial TPS application under receipt number EAC0126650818.<sup>1</sup> That application was denied by the director on May 17, 2004, because the applicant failed to submit evidence establishing her continuous residence in the United States since February 13, 2001. The applicant's appeal from the denial of her application was received on July 17, 2004. On October 12, 2004, the director rejected the appeal as untimely filed and pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2), considered the appeal as a

---

<sup>1</sup> At the time the initial TPS application, the applicant was given alien registration number [REDACTED]. Once it was apparent that the applicant had a prior A-file ([REDACTED]), all the documentation from both TPS applications were consolidated into the prior A-file.

motion to reopen. The director concluded that the grounds of the denial had not been overcome on motion and upheld his decision of May 17, 2004. No appeal for this decision was filed.

On August 24, 2005, the applicant filed an Application for Suspension of Deportation or Special Rule Cancellation of Removal, Form I-881. That application was dismissed on June 22, 2006, as the applicant did not meet the physical presence requirement of seven years.

The applicant filed the current TPS application on September 4, 2006, and indicated she was filing for late registration.

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 28, 2007, 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 June 15, 2007.

On appeal, the applicant claims that she applied for late registration within the 60-day period of her Form I-881 being terminated.

While the applicant had met the threshold requirement for late registration under 8 C.F.R. § 244.2(f)(2)(ii), as she had a pending application during the initial registration period, this requirement alone does not render the applicant eligible for the benefit being sought. The applicant must meet all other requirements, namely evidence that she had filed an application within a 60-day period immediately following the dismissal of her Form I-881 on June 22, 2006. The record reflects that the envelope containing the TPS application was postmarked August 28, 2006, 67 days after the Form I-881 was dismissed and was received by CIS on September 4, 2006. The applicant has, therefore, not met the criteria for late registration described in 8 C.F.R. § 244.2(g). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on March 28, 2007 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following photocopied documents:

- Evidence of her mother's approval notice under section 203 of the NACARA.
- A copy of her initial TPS application along with documents and notices pertaining to her initial TPS application.
- Her birth certificate, El Salvadoran passport and social security card.
- Her employment authorization cards issued on March 28, 2001, and March 28, 2002, pursuant to the filing of an asylum application.

- A letter dated April 23, 2007, from Freeport Public Schools in Freeport, New York, attesting to the applicant's enrollment in English as a Second Language classes from February 8, 2001, through April 26, 2001.
- An unsigned letter dated April 25, 2007, from [REDACTED], vice president of human resources of [REDACTED], in Bayport, New York, who attested to the applicant's employment as an assistant group leader since January 7, 2002.

The employment letter from [REDACTED], has little probative value or evidentiary weight as it was not signed by the affiant.

The applicant asserted that her employment authorization card issued on March 28, 2001, "should be regarded as a valid piece of evidence of my physical and continuous presences in the United States...." The applicant cited 8 C.F.R. § 244.9(a), which states, in pertinent part, that if any required document is unavailable, an affidavit or other credible evidence may be submitted.

The submission of employment authorization cards is not sufficient to establish the applicant's physical presence in the United States as the cards only serve to establish that the applicant was physically present on the issuing dates of March 28, 2001, and March 28, 2002. The "other credible evidence" presented in response to the notice of March 28, 2007, only establishes the applicant's continuous physical presence in the United States through April 26, 2001.

On appeal, the applicant asserts that CIS has already approved her sister's TPS application with practically the same evidence.

There is not enough information available to determine whether the fact pattern in the instant case was the same as in the case cited by the applicant. Nevertheless, it must be noted that each individual case is ultimately decided on its own merits and based on its own record of proceeding.

The applicant, on appeal, submits a signed letter from [REDACTED] who attested to the applicant's employment since January 7, 2002, along with wage and tax statements from 2002 through 2006.

Throughout the application process, the applicant has presented evidence which serves to establish her physical presence from March 9, 2001 through April 26, 2001, and since January 7, 2002. There is a significant period of time that has not been accounted for namely, April 27, 2001, through January 6, 2002.

The applicant has not submitted sufficient evidence to establish her continuous physical presence in the United States 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(b). Consequently, the director's decision to deny the application for TPS on this ground will also be affirmed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

Beyond the decision of the director, the applicant has provided insufficient evidence to establish her continuous residence during the requisite time period. The documentation submitted only serves to establish her continuous residence from February 13, 2001, through the April 26, 2001, and since January 7, 2002. Therefore, the application also must be denied for this reason.

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.