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FILE:

[REDACTED]  
[EAC 07 144 51807]

Office: VERMONT SERVICE CENTER

Date:

FEB 20 2008

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, 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 found that the applicant had failed to establish her nationality and her qualifying continuous physical presence in the United States during the requisite period.

On appeal, the applicant reasserts her claim of eligibility for TPS. The applicant states that her husband and children have been granted TPS and provides copies of their employment authorization cards.

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 initial registration period for El Salvadorans was March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial application with CIS on August 16, 2002. On April 7, 2004, the director denied the application because 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 applicant's appeal from the denial of that application was dismissed on September 8, 2005, as the AAO concurred with the director's findings.

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

The applicant filed the current TPS application on April 19, 2007, 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 August 9, 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 her marriage certificate and evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, asserted that she was married to her spouse, [REDACTED] in a civil and church ceremony. The applicant provided copies of her El Salvadoran marriage certificates with English translations, which indicated her civil ceremony occurred on August 28, 1993, and

her church ceremony occurred on December 28, 1996. The applicant also provided a copy of her spouse's employment authorization card and 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 September 17, 2007.

The AAO, however, disagrees with the director's finding as the applicant, in response to the notice of August 9, 2007, provided sufficient evidence to establish that she is a spouse of an alien currently eligible to be a TPS registrant. Accordingly, the director's finding that the applicant had failed to establish she was eligible for late registration is withdrawn.

The second issue in this proceeding is whether the applicant has established her nationality.

The record reflects that at the time the applicant filed her initial application, she submitted a copy of her El Salvadoran cedula (identification card) and birth certificate. Accordingly, the director's finding that the applicant had failed to establish her nationality is withdrawn.

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

The record reflects that prior to the denial of her initial TPS application, the applicant provided the following documentation in an attempt to establish her residence and physical presence in the United States during the requisite periods.

- A bank statement for the period December 21, 2002, through January 23, 2003, from Bank of America.
- A lease agreement entered into on June 1, 2002.
- An uncertified Form 1040 for 2003
- An affidavit notarized on April 7, 2003, from [REDACTED] of Alexandria, Virginia, who indicated that the applicant's spouse and his family "arrived" at his house in January 2001. The affiant asserted that he has known the family for many years and he provided the family with food and shelter.
- An unsigned letter dated February 11, 2004, from Baltimore Marriott Waterfront Hotel, which indicated that the applicant has been employed as a dining room attendant since October 17, 2002.

On April 19, 2007, the applicant submitted copies of the some of the documents that were previously provided along with the following:

- A 2002 wage and tax statement from Marriott Hotel Services, Inc.
- Her spouse's 2002 wage and tax statement.
- An uncertified Form 1040 for 2002.

As stated above, the applicant was requested on August 9, 2007, to submit evidence establishing her qualifying continuous physical presence in the United States. The applicant, in response, provided copies of

some of the documents previously submitted along with a wage and tax statement and an uncertified Form 1040 for 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on September 17, 2007.

The applicant claims to have been resided in the United States since January 30, 2001; however, she only provides one affidavit in an effort to establish her physical presence in the United States since March 9, 2001. Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that a personal affidavit on an applicant's behalf is sufficient to establish the applicant's qualifying continuous physical presence in the United States. Moreover, the affidavit provided by the applicant is not supported by any other corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence for the period from March 13, 2001, to June 1, 2002, to support her claim. The remaining documents submitted only serve to establish her presence in the United States since June 1, 2002. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the physical presence requirements described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for this reason will be affirmed.

On appeal, the applicant appears to indicate that CIS has approved her spouse's and children's TPS applications with practically the same evidence. If these applications were approved based on the same unsupported documentation that is contained in the applicant's record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It must be noted that each individual case is ultimately decided on its own merits and based on its own record of proceeding.

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).

The applicant also has not submitted sufficient evidence to establish her continuous residence in the United States since February 13, 2001, through June 1, 2002, and therefore has failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the application must also 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.