

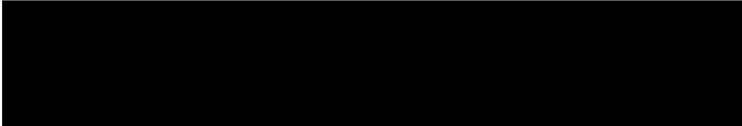
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: Vermont Service Center Date: JAN 03 2008
[EAC 06 353 74540]

INRE: Applicant: " [REDACTED]

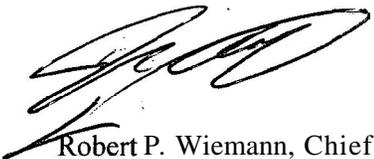
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, reopened and denied **again** by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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 qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts she is eligible for TPS.

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 (t)(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 regulation at 8 C.F.R. 244.1 states that brief, casual and innocent absence means a departure from the United States that satisfies the following:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the **absence**.
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The **purposes** for the absence from the United States or action while outside the United States were not contrary to law.

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. Subsequent extensions of the TPS designation have been granted, 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 Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on September 18, 2006. 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 January 8, 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, and asserted that an I-130 filed on her behalf qualifies her to file a late registration.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on February 26, 2007. A Motion to Reopen was granted and the application was again denied by the Director on June 14, 2007.

On appeal, the applicant again asserts that an I-130 was filed on her behalf and that she qualifies to file a late registration application.

Individuals who are awaiting preference allocation for an immigrant visa under section 203 of the Act are not eligible for late registration under 8 C.F.R. § 244.2(f)(2), because awaiting a visa preference allocation does not constitute having an application for adjustment of status. An applicant must file a subsequent I-485 in order to have an application for adjustment of status based on an approved I-130. The applicant's I-485, adjustment of status, was not filed until February 17, 2006, after the initial registration period, and does not qualify the applicant under 8 C.F.R. § 244.2(f)(2). An applicant must file a late initial registration within sixty days of the termination of any qualifying condition. The applicant's second B-2 status expired on April 17, 2002, within the initial registration period, and thus, the applicant had until the close of the initial registration period to file her initial application. For these reasons, 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 residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on January 8, 2007, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided letters and incomplete pay stubs.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on June 14, 2007.

On appeal, the applicant reasserts her claim and resubmits documentation relating to residence and presence.

The director appropriately addressed the weight of the evidence submitted, unclear pay stubs and letters of attestation, and exercised reasonable discretion in determining that the applicant had not established a qualifying residence and physical presence. However, regardless of the weight of the evidence submitted, the applicant has admitted being absent from the United States from June 16, 2001, through October 19, 2001, a period of four months. In addition, there is a stamp in the applicant's passport indicating she entered El Salvador on December 19, 2001. Counsel for the applicant claims this is a "mistake," however, simply asserting that a stamp in a passport is a mistake is not sufficient to overcome the very unusual nature of such a mistake being made. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Regardless of the doubts raised by the date stamp in the applicant's passport, being absent for a period of four months is not brief, casual or innocent. In the least it indicates the applicant was not residing in the United States during this period. Due to the applicant's prolonged absence she cannot satisfy the qualifying residence and continuous physical presence requirements for Salvadoran TPS applicants. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

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.