

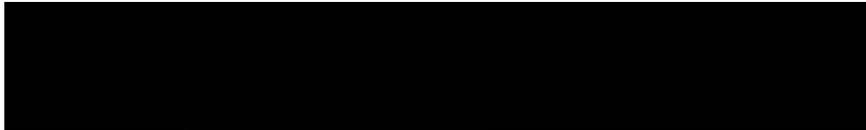
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE: [REDACTED]
[EAC 07 046 70240]

OFFICE: VERMONT SERVICE CENTER

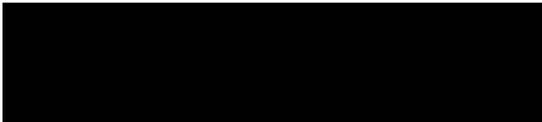
DATE: JAN 10 2008

INRE: 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 Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 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.

On appeal, counsel asserts the applicant is eligible for the benefit being sought because common law marriages are recognized in her native country, El Salvador.

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 designated by the Attorney General 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 EI Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002.

The record reveals that the applicant filed her initial TPS application on July 2, 2001, under Citizenship and Immigration Services (CIS) receipt number LIN0121352796. The Director, Nebraska Service Center, denied that application due to abandonment on February 27, 2002. As the application was denied due to abandonment there was no appeal rights; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe. The applicant filed her current TPS application on November 15, 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.

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 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).

In support of the TPS application, counsel asserted that the applicant is eligible for late registration because the applicant is a spouse of an alien currently eligible to be a TPS registrant. Counsel claimed that the applicant has been married to her spouse since February 11, 1999, according to common law marriage of EI Salvador. As evidence to support his statement, counsel provided a photocopy of the EI Salvador Family Act, Law No. 677, in the Spanish language with the required English translation. This law, which took effect on October 1, 1994, stated in part, if a man and woman resided together for more than three years in a non-matrimonial union, the law considers it as matrimonial union. Counsel also provided photocopies of: 1) an Illinois marriage certificate that indicates the applicant's marriage to her spouse occurred on July 17, 2006; 2) her spouse, _____ birth certificate, employment authorization cards, and approval notice; and 3) evidence to establish the applicant's continuous residence since February 13, 2001 and her physical presence since March 9, 2001.

On April 11, 2007, the director issued a Notice of Intent to Deny, which advised the applicant that because her marriage had occurred subsequent to the initial registration period, she did not qualify for late registration as a spouse of a TPS registrant. 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).

Counsel, in response, asserted the applicant was in a common law marriage with her spouse since February 11, 1999, that is legally recognized by the EI Salvador Family Act, Article 118. Counsel asserted that the applicant and her spouse cohabitated since before February 1996 and provided copies of their children's February 11, 1996, and October 27, 1997, EI Salvadoran birth certificates, which listed both the applicant's and her spouse's names. Counsel cites *Us. v. Gomez-Orozco*, 28 F. Supp .2d 1092 (C.D. Ill 1998)¹ and argues "[w]here a state recognizes a Common Law Union, it would be considered a valid marriage for

¹ Which was reversed on other grounds, *U.S. v. Gomez-Orozco*, 188 F.3d 422 (7th Cir. 1999)

immigration purposes." Counsel provided the Laws of the Republic of El Salvador, namely portions related to the family code.

Counsel also cites several decisions issued by the Board of Immigration Appeals (BIA) and argues that the BIA has held that the validity of married relationships and how persons may enter into marital relationships is governed by the law of the state or country where the relationship is celebrated or created.

The director, in denying the application, determined that the applicant had failed to submit any evidence to establish her eligibility for late registration and concluded the applicant was ineligible for benefit being sought.

On appeal, counsel argues that the director failed to address whether the a man and woman in a Life Companion Union recognized under the law of El Salvador are "spouses" within the meaning of the late initial registration under section 8 C.F.R. § 244.2(£)(2).

A non-matrimonial union recognized in El Salvador requires that the individuals reside together for three years and must be declared in court in order to benefit from the protection granted in the Family Code. In this case, except birth certificates, no evidence has been submitted establishing that the applicant and had resided together for three years in El Salvador and that the union was declared in court. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1,3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, while counsel asserts that the applicant entered into a common-law marriage on February 11, 1999, the applicant indicated on her applications dated July 2,2001, September 28, 2002, and August 22, 2003, that she considered herself single. Therefore, the applicant's claim of informal marriage cannot be accepted for purposes of this application.

The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(£)(2). Consequently, the director's decision to deny the application for TPS will 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), *ajJ'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, it also is noted that the applicant has provided insufficient evidence to establish her qualifying continuous residence or continuous physical presence during the requisite time periods. Some of the documents submitted are addressed to [REDACTED]; however, no evidence has been submitted to establish that the applicant and [REDACTED] are one and the same person. Therefore, the application also must be denied for these reasons.

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.