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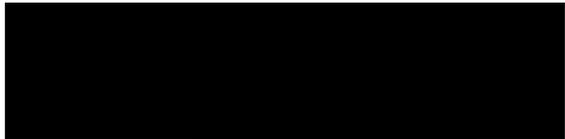
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JAN 31 2008
[EAC 07 027 70777]
[REDACTED]-consolidated]

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 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 applicant because 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 submits additional copies of her spouse's employment authorization card, her marriage certificate and letter from her spouse, requesting the applicant be added to his TPS application.

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.

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

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).

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application on March 14, 2002, under Citizenship and Immigration Services (CIS) receipt number EAC0214250559. The director denied that application due to abandonment on May 9, 2003. As the application was denied due to abandonment there were 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 October 25, 2006.¹

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 first 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.

¹ At the time the initial TPS application was filed, 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.

The director determined that the applicant had failed to submit evidence to establish her eligibility for continuous residence and physical presence during the requisite periods and denied the application on May 15, 2007.

Except for the initial TPS application filed on March 14, 2002, and a letter dated January 22, 2002, from the Director, Vermont Service Center, addressed to the applicant, the applicant has not submitted any credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, or 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) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

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

At the time the applicant filed her current application, she submitted a copy of her marriage certificate, which indicated her marriage occurred on April 23, 2005. The applicant also submitted a copy of her spouse's, [REDACTED], employment authorization card, and a letter from her spouse, requesting the applicant be added to his TPS application

The director determined that the applicant was not eligible for late registration as a spouse of an alien currently eligible to be a TPS registrant because her marriage occurred subsequent to the requisite period. Accordingly, the director denied the application on May 15, 2007.

On appeal, the applicant submits additional copies of her marriage certificate along with her spouse's employment authorization card and a letter from her spouse, requesting the applicant be added to his TPS application.

The regulation clearly states that in order to be eligible for late registration under 8 C.F.R. § 244.4 (f)(2)(iv), the applicant must be the spouse of an alien eligible for TPS during the initial registration period, which for El Salvadorans was March 9, 2001, through September 9, 2002. In this case, the marriage did not occur prior to or during the initial registration period. As such, the applicant has not met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(iv). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration as a spouse of an alien currently eligible to be a TPS registrant will be affirmed.

It must be noted that the record reflects that on September 27, 1993, the applicant filed an Application for Asylum, Form I-589. On September 27, 2000, an immigration judge (IJ) issued an order denying the applicant's Form I-589 and granting the applicant voluntary departure in lieu of removal on or before November 26, 2000. On October 11, 2000, the applicant appealed the IJ's decision to the Board of Immigration Appeals (BIA). On June 26, 2001, the BIA issued a decision of "Not R/O," Not Removal Order, due to TPS.² It is noted that this order does not result in a final order; it is merely an administrative convenience, which allows the removal of cases from the calendar in appropriate situations. See *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996). The applicant's asylum application was therefore pending with CIS during the initial registration period.

² The director, in a letter dated January 22, 2002, incorrectly informed the applicant that the BIA had dismissed her appeal on June 26, 2001.

While the applicant may be eligible for late registration as her Form I-589 did not result in a final order, her TPS application cannot be approved as the applicant has not submitted any evidence to establish qualifying evidence of her continuous residence and physical presence during the requisite periods in the United States as required in 8 C.F.R. §§ 244.2(b) and (c).

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.