

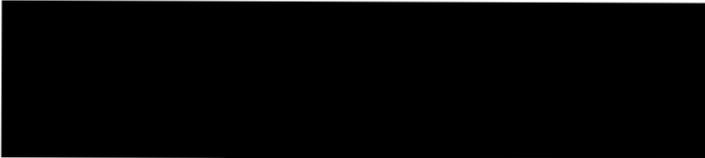


U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
[EAC 08 045 82847]

Office: VERMONT SERVICE CENTER

Date:

**JUL 24 2008**

IN RE:

Applicant:



APPLICATION:

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

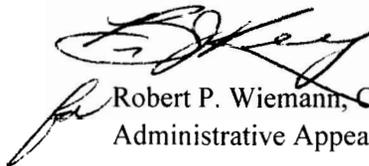
ON BEHALF OF APPLICANT:

ELSY SEGOVIA



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 is a native and 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 determined that the applicant failed to establish she: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, counsel for the applicant requests that the denial of the application be reconsidered and reversed. The applicant also submits evidence in an attempt to establish her eligibility for late initial registration and her qualifying continuous residence and continuous physical presence in the United States which she asserts that she established.

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 as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.

*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.

*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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until March 9, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on December 22, 2007. CIS records indicate that the applicant filed her initial TPS application on September 24, 2001. That application was denied by the Director, Vermont Service Center, on April 24, 2003 because the applicant failed to establish continuous residence and continuous physical presence in the United States during the qualifying period. The applicant appealed that decision on May 27, 2003, and the appeal was dismissed by the AAO on September 27, 2004.

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 record of proceeding confirms that the applicant filed this application on October 22, 2007, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On March 13, 2008, the applicant was informed that she had failed to establish her eligibility for late initial registration and failed to establish her continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, counsel for the applicant requests that the applicant be reconsidered and reversed. According to counsel, the applicant never received the April 24, 2003 denial notice. Counsel also contends that CIS accepted the applicant's subsequent re-registration applications and issued her an EAD indicating that she was still deemed prima facie eligible for TPS. Counsel also asserts that the applicant is married to a TPS-eligible Salvadoran and is therefore eligible for late initial registration. In addition, the applicant submits evidence in an attempt to establish her continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file her TPS application within the initial registration period. The applicant resubmits evidence of her marriage. However, while CIS regulations may allow spouses of TPS beneficiaries to file their applications after the initial registration period had closed; the applicant is required to have been married during the initial registration period. Based on the documentation provided by the applicant, she was married on November 29, 2003, more than one year subsequent to the end of the initial registration period. Therefore, the applicant has not established that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant failed to establish her eligibility for late registration will be affirmed.

The second and third issues in this proceeding are whether the applicant has established her continuous residence in the United States since February 13, 2001 and her continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was informed on March 13, 2008 that she had failed to establish her qualifying continuous residence and continuous physical presence in the United States. The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant submits the following:

1. Copies of the Social Security Card and Employment Authorization card for her husband, her State of New Jersey marriage license showing she was married on November 29, 2003, and, a New Jersey Certificate of Live Birth indicating her son's birth on March 26, 2003.
2. Statements from [REDACTED], and [REDACTED]
3. Copies of tax documents for the years 2001, 2005, and 2006.
4. Copies of Earnings Statements dated May 18, 2001, May 25, 2001, June 1, 2001, July 6, 2001, August 10, 2001, August 17, 2001, August 24, 2001, November 24, 2004, December 2, 2004, January 13, 2005, July 28, 2005, August 4, 2005, and August 18, 2005.
5. Copies of documents from the State of New Jersey government dated December 12, 2002, February 23, 2003, and April 25, 2003.
6. Copies of a December 16, 2002 statement from St. Joseph's Hospital & Medical Center, and a copy of a March 6, 2007 receipt from Planned Parenthood.

The 2001 tax documents indicate the applicant was present in the United States during 2001. However, they do not establish the applicant's continuous residence from February 13, 2001 and her continuous physical presence in the United States from March 9, 2001 to the filing date of her TPS application.

██████████ states that the applicant lived at his apartment, rent-free from November 2000 until February 2001. However, this statement has little evidentiary weight or probative value. These statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of **contemporaneous evidence to support these assertions; however, no such evidence has been provided.** Fr. ██████████ states that the applicant was a member of his parish from December 2000 through May 2001 and that at that time she lived with her sister. This statement also has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. In addition, ██████████'s statement appears to contradict ██████████'s statement. Mr. ██████████ fails to mention that the applicant resided at his apartment with her sister. This discrepancy has not been satisfactorily explained. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

██████████ states that the applicant was seen at her office beginning on July 25, 2003. Consequently, Dr. ██████████ can only attest to the applicant's presence in the United States since that date. Similarly, all of the remaining evidence presented by the applicant is dated subsequent to the qualifying dates for continuous residence and continuous physical presence and is therefore of little or no probative value.

In addition, as discussed above, the applicant claims that she never received the April 24, 2003 decision denying her previous TPS application. However, the decision was sent to the address of record for the applicant's counsel at the time. In fact, counsel filed an appeal of this decision on May 27, 2003. Therefore, the applicant must have received the notice. Counsel also contends that CIS accepted subsequent TPS re-registration applications and issued the applicant an EAD which indicated that she was still deemed *prima facie* eligible for TPS. However, the fact that the applicant was issued EADs is not evidence that she was approved TPS. Based upon filing of the I-821 applications for TPS, the applicant was afforded temporary treatment benefits and was issued Employment Authorization upon establishing *prima facie* eligibility<sup>1</sup> for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS.

The applicant has not submitted sufficient evidence to establish her qualifying residence since February 13, 2001 and her continuous physical presence in the United States since March 9, 2001. 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 temporary protected status 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 temporary protected status has the burden of proving that

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<sup>1</sup> Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if un rebutted will establish a claim of eligibility under section 244 of the Act.

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.