



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

APR 24 2008

FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE:

[EAC 07 292 70585]

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:

[REDACTED]

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.

  
for 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 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, counsel for the applicant states that CIS was wrong in denying the applicant's TPS application because the applicant is qualified to take advantage of the late initial registration provision.

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 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 her application with Citizenship and Immigration Services (CIS) on July 5, 2007. 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 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 director determined that the

applicant had failed to establish she was eligible for late registration and denied the application on October 19, 2007.

On appeal, counsel for the applicant states that the applicant has continuously resided in the United States since before February 13, 2001, and she is eligible for late registration because at the time of the initial registration period, the applicant was the common law spouse of an alien who is currently eligible for TPS registration.

Counsel submitted a marriage certificate indicating that the applicant was married on June 4, 2007, to an alien currently eligible for TPS. While the evidence of the record confirms that the applicant's husband was granted TPS, the record also shows that the applicant was not married until after the initial registration period ended on September 9, 2002. Counsel states that the applicant was the common law spouse of \_\_\_\_\_ since January 2001; however, he has not submitted any evidence to support that claim. In order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). Since the applicant was not the spouse of an alien currently eligible to be a TPS registrant during the initial registration period, she is not eligible for late registration. Consequently, 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.

On appeal, counsel for the applicant reasserts the applicant's eligibility for TPS and submits the following documentation:

1. A copy of a Notice of Approval of TPS re-registration issued to the applicant's husband on August 16, 2006;
2. A copy of the applicant's husband's EAD card;
3. A copy of the applicant's Salvadoran passport;
4. Copies of affidavits dated November 8, 2007 from \_\_\_\_\_ and \_\_\_\_\_, attesting to have known the applicant since August of 1995;
5. An affidavit dated October 30, 2007 from \_\_\_\_\_, EC, CCC, Executive Chef of The Mansion on Main Street, attesting that the applicant was part of his staff at the Mansion Catering.
6. An affidavit dated October 30, 2007 from \_\_\_\_\_, stating that she has known the applicant since May of 2000.

The applicant has not submitted sufficient 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. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support her assertions of being in the United States during the requisite time period since she claimed to have been present since August 1, 1995. The applicant submitted affidavits in an effort to establish her residence and physical presence in the United States during the requisite time periods. \_\_\_\_\_ states that the applicant has been a friend and a member of his staff for "the last few years" which, at best, would only cover the period

from late 2004 through October 30,2007, the date he signed the letter. Although the other affiants state in their affidavits that they have known the applicant to be present in the United States since 1995 and/or 2000, there has been no corroborative evidence submitted to substantiate their assertions. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by church, unions, or other organizations of the applicant's residence as specifically described in 8 C.F.R. §244.9(a)(2)(i) and (v).

The applicant has not submitted sufficient 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. 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.