



U.S. Citizenship
and Immigration
Services

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M

[REDACTED]

FILE: [REDACTED]
[EAC 07 247 70234]

OFFICE: Vermont Service Center

DATE: **AUG 01 2008**

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:

[REDACTED]

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) 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 record reveals that the applicant filed her initial TPS application on November 13, 2002, under receipt number EAC 03 077 53960. The VSC director denied that application on June 13, 2003, due to abandonment because the applicant failed to respond to the request for evidence. It is noted that the notice was sent to the correct address listed on the applicant's TPS application. The director informed the applicant that there is no appeal from a denial due to abandonment, but that she could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision. The record does not reflect that the applicant filed a motion within the allotted timeframe.

On April 28, 2005, the applicant filed a second TPS application under Citizenship and Immigration Services (CIS) receipt number WAC 05 210 84564, and indicated a new application. The Director, California Service Center, incorrectly denied that application as a re-registration TPS application on April 12, 2006. The applicant did not submit an appeal from the director's decision.

The applicant filed the current TPS application on June 1, 2007, under CIS receipt number EAC 07 247 70234, and indicated she was filing a new TPS application. The VSC director denied that application on December 20, 2007, after he determined that 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 states that the applicant is a citizen of El Salvador who entered the United States with her husband and her two sons on or about January 7, 2000, through the border of Texas and Mexico by land without inspection. He further states that the applicant is eligible for late initial registration for TPS because she is the spouse of an alien currently eligible to be a TPS registrant.

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 June 1, 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 director determined that the applicant had failed to establish her eligibility for TPS and denied the application on December 20, 2007.

On appeal, counsel states the director erred in finding that the applicant's spouse was not an alien eligible to be a TPS recipient.

The record reveals that the applicant's husband was granted TPS on January 14, 2008 and, thus, the applicant has established eligibility for late registration. Therefore, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be withdrawn.

The applicant has established that she is eligible for late registration under the provisions described in 8 C.F.R. § 244.2(f)(2)(iv) because her spouse has been granted TPS. However, while regulations may allow the spouse of a TPS beneficiary to file a TPS application after the initial registration period has closed; these regulations do not relax the requirements for eligibility for TPS. The spouse of an eligible TPS registrant is still required to meet the continuous residence and continuous physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c).

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 reasserts the applicant's eligibility for TPS and submits the following documentation:

1. Copies of the applicant's and her husband's birth certificates with English translation;
2. Copies of the applicant's husband's TPS application and receipt notices from CIS;
3. A copy of the applicant's affidavit dated March 30, 2007;
4. An affidavit from [REDACTED] dated May 16, 2006, attesting that he is the brother of the applicant's husband and that the applicant and her family came to the United States on January 1, 2000;
5. An affidavit from [REDACTED] dated July 8, 2006, stating that the applicant and her family have been living in the United States since March of 2000;

6. An affidavit from [REDACTED] dated January 24, 2006, attesting that the applicant and her family had rented and lived in the apartment at [REDACTED] Huntington Station, New York, since January of 2000 to December of 2002;
7. An affidavit from [REDACTED] dated January 29, 2005, attesting that the applicant and her two sons were living in his house from November of 2002 to December of 2004;
8. A copy of an Admissions/Registration Form, payment receipts, Add/Drop Refund Request Forms, and a Registration Statement from Clackamas Community College for the years 2003, 2004, and 2005;
9. A copy of a Certificate of Completion issued to the applicant for having completed 7 hours of training at the Latina Prenatal Summit dated September 19, 2003;
10. A copy of a medical bill from OHSU Medical Group dated April 10, 2004;
11. Copies of bills from Qwest dated May 21, 2004 and July 23, 2005
12. A copy of a letter from [REDACTED] (SMG) Foundation dated January 21, 2005, stating that the applicant had been with SMG Foundation since February of 2003;
13. A copy of a Certificate of Completion from SMG dated February 26, 2005;
14. A copy of medical bill from Providence Medical Group North (PMG Gateway FCM) dated July 26, 2006;
15. Copies of Forms 1040A, U.S. Individual Income Tax Return, for the years 2002, 2003, 2004, 2005, and 2006; and,
16. A copy of an Apartment Lease Agreement from Oregon Rental Housing with Fixed Term Tenancy beginning January 8, 2005, and ending on January 31, 2006.

The affidavits submitted in support of the applicant's continuous residence and continuous physical presence only state that the applicant had been in the United States since 2000, and thus are not sufficiently relevant to support the applicant's assertions of eligibility for TPS. Even in the light most favorable to the applicant these letters lack sufficient detail and context, and do not cover the entire requisite period. In addition, on appeal, the applicant submits an affidavit from her husband's brother attesting that the applicant, along with her husband and two sons, came to the United States on January 1, 2000. Whereas an affidavit from [REDACTED] stating that the applicant and her family have been living in the United States since March 2000. While 8 C.F.R. § 244.9(a)(2) specifically states that additional documents such as letters "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is sufficient to establish the applicant's qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since January 7, 2000, it is reasonable to expect that she would have some other type of contemporaneous evidence to support her claim. However, no such evidence has been provided. The evidence submitted does not establish the applicant's continuous residence and continuous physical presence in the United States until March 20, 2003.

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). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies detailed above. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish eligibility for TPS.

Furthermore, it is noted that the Forms 1040A, U.S. Individual Income Tax Return, for the years 2002, 2003, and 2004 were signed and dated April 11, 2005. If the forms were not prepared and signed until April 11, 2005, they would not establish continuous residence and continuous physical presence in the United States for the requisite period. In addition, personal income tax documents are not sufficiently probative to demonstrate continuous physical presence for an applicant during that period. Moreover, tax forms that are not certified are of no probative value because CIS cannot determine that such documentation was actually submitted contemporaneously during the period covered.

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 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.