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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services



M₁

DATE: **MAY 09 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. An untimely appeal was treated as a motion to reopen and was denied by the director. The applicant appealed the director's decision on the motion and it is now before the Administrative Appeals Office (AAO) 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 application 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 asserts that she has been residing in the United States since June 16, 2000. The applicant asserts that she did not file a TPS application during the initial registration period because "I had no money to pay the fee's." The applicant states that she subsequently applied for TPS, but did not receive a favorable decision. The applicant requests that her application be reconsidered and approved for humanitarian reasons. The applicant submits copies of documents previously provided along with additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States.

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 Secretary 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 term *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 term *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 September 9, 2013, 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 U.S. Citizenship and Immigration Services (USCIS). 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The record reveals that the applicant filed her initial TPS application (EAC0324353625) on August 20, 2003. On January 21, 2004, the director denied the application because the applicant failed to: 1) establish late registration eligibility; 2) establish continuous residence since February 13, 2001; 3) establish continuous physical presence since March 9, 2001; 4) establish that [REDACTED] and [REDACTED] were one and the same; and 5) explain the date of birth discrepancy between her TPS application and on her child's birth certificate. On March 1, 2004, the applicant filed an untimely appeal. The director did not forward the appeal to the AAO, but treated the appeal as a motion to reopen pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2).¹ On April 28, 2004, the director denied the motion as it did not state the new facts to be proved, and be supported by affidavits or other documentary evidence.

On May 30, 2005, the applicant filed another TPS application (EAC0524370604). On July 14, 2006, the director denied the application as the applicant had failed to establish: 1) late registration eligibility; 2) continuous residence since February 13, 2001; and 3) continuous physical presence since March 9, 2001. No appeal was filed from the denial of that application.

On October 6, 2010, the applicant filed the current TPS application.

On May 27, 2011, 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, in response, only provided documentation relating to her residence and 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 September 1, 2011.

The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances *specifically identified* in the regulations. The applicant's circumstances outlined on appeal do not meet any of the criteria described in 8 C.F.R. § 244.2(f)(2). There is no waiver available, even for humanitarian reasons, of the requirements stated above.

¹ The regulation states if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second and third issues to be addressed 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.

Throughout the application process, the applicant submitted:

- Earnings statements dated November 3, 2000 and December 14, 2001, for [REDACTED] and an employment letter from a representative of [REDACTED] in Dumont, New Jersey, who attested to the employment of [REDACTED] from September 26, 2000 to December 7, 2001.
- Documents dated June 13, 2005 and December 23, 2005, from the Internal Revenue Service, and Montgomery County (Maryland) Department of Social Services, respectively.
- A money transfer receipt dated November 17, 2005, and a cellular phone statement from T-Mobile for the period August 10, 2005 to September 9, 2005.
- Unsigned Forms 1040EZ, U.S. Individual Income Tax Return, for 2001 and 2002.
- Earnings statements dated March 2 and 9, 2001, for [REDACTED] from [REDACTED] in Nutley, New Jersey.
- A clinic card and medical discharge document in the name of [REDACTED] dated April 9, 2001, and July 9, 2001, respectively.
- An undated document from Chevy Chase Bank.

Along with her current application, the applicant submitted a statement indicating that she had used the name [REDACTED] while employed at [REDACTED]

On May 27, 2011, the applicant was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States and evidence establishing her nationality. The applicant, in response, provided a copy of her El Salvadoran passport and birth certificate with English translation. The applicant also resubmitted the earnings statements dated November 3, 2000 and March 2 and 9, 2001.

The director, in denying the current application, noted the following:

- The birth certificate of [REDACTED] listed the mother's name and date of birth as [REDACTED] born November 19, 1978. However, the name and date of birth on the applicant's passport and birth certificate are listed as [REDACTED] born February 12, 1978.
- The employment letter from [REDACTED] had no evidentiary weight or probative value as it did not provide basic information that is expressly required by 8

C.F.R. § 244.9(a)(2)(i). Specifically, the affiant did not provide the address where the applicant resided during the period of her employment or the exact period of employment.

- The employment letter and employment earnings statements from The [REDACTED] and [REDACTED] attested to the employment of "[REDACTED]" and listed two social security numbers.
- In a notice dated December 29, 2005, the applicant was provided the opportunity to explain the above discrepancies, and provide originals for all documents previously submitted. The applicant, however, failed to address the discrepancies and failed to provide the original documents.

The director determined that the documents were questionable and could not be considered credible, because the applicant had not provided a plausible explanation for the above discrepancies. The director concluded that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application.

On appeal, the applicant submits a corrected certificate of live birth for [REDACTED] Rodriguez, which lists her name and date of birth as [REDACTED] born February 12, 1989.

The applicant submits an additional letter from a representative of The [REDACTED] who attested to the employment of "[REDACTED]" from September 2000 to December 2001. The applicant also resubmits the earnings statements from The Fillo Factory and Bergenfield Restaurant Corp.

The letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of her employment and duties with the company. Further, it is the applicant's burden to establish that she and [REDACTED] are one and the same person. Evidence from employers establishing the use of an alias would have been sufficient to overcome this issue. Without corroborative evidence from her purported employers, the documents submitted have no probative value to establish that she is the same person as [REDACTED]. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). It is noted that the applicant did not indicate on any of her applications that she had used the alias [REDACTED].

The 2001 and 2002 income tax returns have little evidentiary weight or probative value as they were not certified as being filed pursuant to 8 C.F.R. § 244.9(a)(2)(i).

The applicant also submits affidavits from [REDACTED]. [REDACTED] attests to knowing the applicant since February 15, 2001, and [REDACTED] attests to knowing the applicant since September 1, 2000.

██████████ indicate that they have known the applicant since June 25, 2001 and February 1, 2010, respectively. All the affiants attested to the applicant's moral character.

The affidavit from ██████████ does not provide detailed evidence establishing how he knew the applicant, the details of his association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite periods. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavit from ██████████ does not provide sufficient detail to establish that he had an ongoing relationship with the applicant that would permit him to know of the applicant's whereabouts and activities throughout the requisite period. The remaining affidavits cannot serve to establish the applicant's continuous residence as the affiants claimed to have met the applicant subsequent to February 13, 2001.

The remaining documents submitted on appeal only serve to establish the applicant's continuous residence and continuous physical presence in the United States since 2003.

The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and 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 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.