

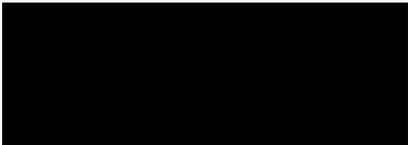
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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MM

FILE: [REDACTED]
[EAC 03 259 55276]

Office: VERMONT SERVICE CENTER

Date: AUG 26 2005

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, Director
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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish that she was eligible for late registration.

The applicant asserts that she is applying for re-registration and that her first TPS application had been approved.

The record reveals that the applicant did file an initial TPS application on June 29, 2001, which was during the initial registration period. That application was denied on June 29, 2002 due to abandonment. Since the application was denied due to abandonment there was no appeal available; 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 a subsequent Form I-821, Application for Temporary Protected Status, on September 15, 2003. The director denied this second application because it was filed outside of the initial registration period, the applicant failed to submit sufficient evidence to establish continuous residence and continuous presence in the United States, and because she had failed to establish her eligibility for filing under the provisions of late registration. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on June 29, 2001. That initial application was denied by the director on June 29, 2002. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on September 15, 2003. Since the initial application was denied on June 29, 2002, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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. A subsequent extension of the TPS designation has been granted with validity until September 9, 2006, 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 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 his application with Citizenship and Immigration Services (CIS), on September 15, 2003.

The record of proceedings confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and that she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On December 5, 2003, 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 applicant, in response, provided documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish that she was eligible for late registration and denied the application on February 20, 2004.

On appeal, the applicant asserts her claim of eligibility for TPS.

The applicant submitted evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish 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 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, and her continuous physical presence in the United States since March 9, 2001.

The applicant initially submitted the following documentation:

1. An affidavit from [REDACTED] dated May 15, 2001 in which he stated that he had known the applicant for three years and that she had continuously resided in the United States since before February 13, 2001;
2. An affidavit from [REDACTED] in which she stated that she had known the applicant for three years and that she had continuously resided in the United States since February 13, 2001;
3. A copy of a birth certificate from New York state in which the applicant is named the mother of [REDACTED] who was born October 15, 1995;
4. A copy of a Sprint utility bill dated May 20, 1999 and bearing the applicant's name;
5. Copies of date stamped letters dated April 12, 1996, August 11, 1999, April 13, 2001, and April 21, 2001;
6. Copies of receipts from Gigante Express dated January of 1999 and bearing the applicant's name and Hempstead, New York address; and,
7. Copies of PCS phone charges dated May 23, 1999 and bearing the applicant's name.

As stated above, the applicant was requested on December 5, 2003 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following documentation:

8. An affidavit from [REDACTED] in which he stated that he has known the applicant since 1998 and that the applicant has rented an apartment from him at [REDACTED] since 2000;
9. A copy of an account statement from North Easton Savings Bank dated December 31, 2001 and bearing the applicant's name and North Easton, Massachusetts address; and,
10. A copy of a Western Union money order receipt dated November 27, 2001 and bearing the applicant's name as the sender.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on June 29, 2002.

On appeal, the applicant reasserts her claim of eligibility for TPS and submits the following documentation:

11. Copies of date stamped envelopes dated October 10, 2000, March 14, 2001, April 3, 2001, June 25, 2001, July 1, 2001, and December 12, 2001, and bearing the applicant's name and address of [REDACTED]

12. A copy of a Western Union money order receipt dated February 9, 2001 and bearing the applicant's name as the sender;
13. A copy of a U.S. Postal Service express mail receipt stamp dated April 9, 2001;
14. A copy of a request for a referral form from Cambridge Health Alliance dated March 24, 2001 and bearing the applicant's name; and,
15. A copy of an affidavit from [REDACTED] in which he states that he has known the applicant since 1998 and that she has rented an apartment from him located at [REDACTED] since 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. There has been no corroborative evidence submitted to support the statements made by [REDACTED] and [REDACTED] regarding the applicant's claimed presence in the United States since 1995. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. Further, the affiants have not demonstrated that their knowledge of the applicant's presence in the United States is independent of what the applicant told them about her entry into the United States. If not, then their statements are essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v).

The copies of money order receipts and postal receipts provided by the applicant are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as money order receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. The applicant claims to have lived in the United States since 1995. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

The dates on the letters submitted by the applicant (Nos. 5 and 11 above) are too sparse to establish the applicant's continuous residence in the United States since February 13, 2001, or continuous physical presence in the United States since March 9, 2001. In addition, the documents noted above appear to have been altered as the original names and dates seem to have been written-over and replaced with the applicant's information. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

All other evidence submitted by the applicant is either dated prior to or after the requisite time period under the TPS program. It is determined that the documentation submitted by the applicant is insufficient to establish that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.