

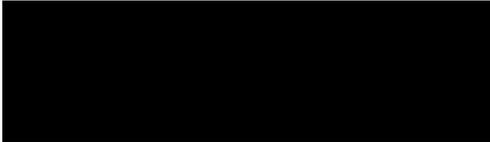
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**U.S. Citizenship
and Immigration
Services**

MI



FILE: [REDACTED]
[SRC 04 003 54912]

Office: TEXAS SERVICE CENTER Date: **DEC 05 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.

Cindy N. Gomez

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 applying for 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 that she was eligible for late registration.

On appeal, the applicant submits a statement and additional evidence.

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 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.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 22, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period 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 late initial registration. 8 C.F.R. § 244.2(g).

The burden of proof is upon the applicant to establish that 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On January 23, 2004, 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 during the requisite periods. In addition, the applicant was requested to provide photo identification.

The applicant, in response, provided an unofficial photo identification card; a furniture receipt dated "2-7-01;" a letter from the furniture company indicating a zero balance as of "12-10-01;" and, an affidavit from [REDACTED] attesting that the applicant has lived with her since February 17, 2001, "for a period of a year and a half."

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on March 4, 2004.

On appeal, the applicant states that she legally married her husband in [REDACTED] Georgia, after learning about the requirements for late registration. She states that she believes they should be considered a married couple since they have been together since 1993, and have three children together, born in 1994, 1995, and 1997, who are all registered with their family names, [REDACTED]. In support of the appeal, the applicant submits the following documentation:

1. A Marriage License, State of Georgia, County of Whitfield, indicating that the applicant and [REDACTED] were married on March 25, 2004;
2. An El Salvadoran birth certificate with English translation for [REDACTED] and,
3. An Employment Authorization document (EAD) for [REDACTED] approved under Category A12, with validity from September 2, 2003 through September 9, 2005.

While it appears that the applicant is married to a TPS registrant, their marriage took place on March 25, 2004, in Dalton, Georgia. Therefore, she has not met the requirements of 8 C.F.R. § 244.2(f)(2), which indicates that the criteria making one eligible for late registration must have existed during the initial registration period.

The applicant states on appeal that she and her husband should be considered as married because they have been together since 1993, and have three children together. The State of Georgia repealed its common-law marriage statute, but does recognize common-law marriages that were entered into in that state before January 1, 1997. GA. Code Ann. § 19-3-1 and 19-3-1.1 (1999). The applicant has not presented evidence that she and her spouse have met the requirements under the Georgia statute to be recognized as having a common law marriage, prior to the legal marriage that took place on March 25, 2004. Therefore, this attestation of informal marriage cannot be accepted for purposes of this application.

The applicant has not submitted sufficient evidence to establish that she has met 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.

Beyond the decision of the director, the applicant also has failed to submit sufficient evidence to establish 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 did not submit documentation for the years 2002 and 2003, or sufficient documentation for the year 2001. The affidavit of [REDACTED], attesting that the applicant resided with her for one a half years, is unsupported by any corroborating evidence, especially given that the applicant indicates that she has lived with her current spouse since 1993. The applicant has, therefore, also failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the applicant must also be denied for these reasons.

In addition, the director's request for evidence specified that the applicant should submit photo identification, such as a driver's license or passport, and stated that unofficial picture identification could not be used for verification of her identity. The record, however, contains only an unofficial "Personal ID Card" issued by an unnamed authority. Therefore, the applicant also has failed to comply with this requirement, and the application must also be denied for this reason.

An alien applying for temporary protected status 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.