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



U.S. Citizenship
and Immigration
Services

MM



FILE:



OFFICE: VERMONT SERVICE CENTER

DATE:

NOV 28 2005

[EAC 04 015 51002]

IN RE:

Applicant:



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 because the applicant had 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 alien 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 § 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 condition described in paragraph (f)(2) of 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.

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.

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 in the United States 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 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 shows that the applicant filed her initial application on September 16, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

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).

In a Notice of Intent to Deny dated April 14, 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 continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. The applicant, in response, provided evidence in an attempt to establish her residence in the United States.

The director determined that the applicant had failed to submit any evidence to establish that she was eligible for late registration and denied the application on June 29, 2004.

On appeal, the applicant asserts that she came to the United States on October 20, 2000, and that her husband has been granted TPS. To support her claim, she submits a copy of the Employment Authorization Card issued to Oscar Recinos on September 10, 2003. She also submits additional evidence, including evidence previously

furnished and contained in the record, in an attempt to establish continuous residence and continuous physical presence in the United States.

While the regulations may allow spouses of aliens who are TPS-eligible to file their applications after the initial registration period had closed, the applicant has failed to submit her marriage certificate as evidence that she was in fact married to [REDACTED] at the time of the initial registration period. It is also noted that the applicant did not indicate on her TPS application that she is married; she wrote "N/A" [not applicable] on Part 3 of the Form I-821 "Information about your spouse and children (if any)." Therefore, the applicant has failed to establish that she met the qualification of a spouse of an alien currently eligible to be a TPS registrant described in 8 C.F.R. § 244.2(f)(2)(iv).

The applicant has 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 failed 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 decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it is noted that in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States, the applicant submitted copies of two contracts issued by Dragon Lair in Framingham, Massachusetts; one copy was furnished in response to the director's intent to deny, and the other copy was furnished on appeal. The contracts both appear to have been altered as the original names, dates, and addresses on each of these documents seem to have been covered-over and the applicant's name, address, and new dates were inserted in their place. 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). Therefore, the application will also be denied for this reason.

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 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.