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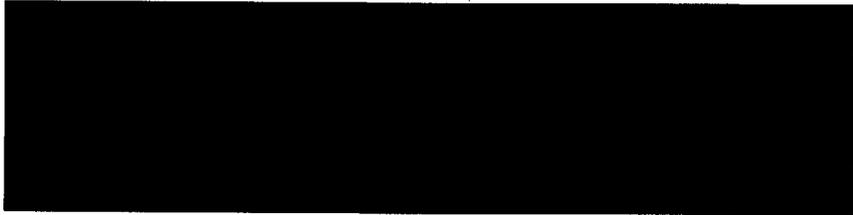
Office: VERMONT SERVICE CENTER

Date: SEP 28 2006

[EAC 03 257 54933]

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:



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 (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 director denied the application because the applicant failed to establish she was eligible for late registration. The director also determined that the applicant failed to establish her continuous residence and her continuous physical presence in the United States during the requisite timeframes.

On appeal, counsel provides a brief statement and submits copies of documentation previously submitted. Counsel states that a separate brief or evidence will not be submitted.

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 first issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, 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 Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record reflects that the applicant filed her application on September 15, 2003.

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 record of proceeding confirms that the applicant filed her application for TPS on September 15, 2003, 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 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).

In a notice of intent to deny, dated January 12, 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 to establish her continuous residence and her continuous physical presence in the United States during the required timeframes.

The director determined that the applicant, in response to the notice of intent to deny, failed to establish her eligibility for late registration, and failed to establish her continuous residence and her continuous physical presence in the United States during the requisite timeframes. The director denied the application on May 21, 2004.

On appeal, counsel states that the applicant applied for TPS "on or about May of 1994 with aide of a notary public." Counsel also states that the applicant "patiently waited for several years for a response from the Service regarding her TPS application, but never received anything." Counsel provided no further information or evidence regarding this subject.

None of the documentation presented on appeal establishes the applicant's eligibility for late registration. Although counsel claims that the applicant filed for TPS in May of 1994, the record contains no evidence of such, nor has the applicant provided any evidence to support this claim. Nevertheless, while regulations may allow an alien currently eligible to be a TPS registrant to file an application after the initial registration period had closed, these regulations do not relax the other requirements for eligibility for TPS. The record indicates that the applicant last entered the United States "at or near Brownsville, Texas, on or about December 7, 2002," almost three months after the initial registration period had ended. The applicant is not eligible for late registration under 8 C.F.R. § 244.2(f)(2), as she arrived in the United States subsequent to the eligibility period. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The remaining issues raised by the director to be addressed in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and whether she has been continuously physically present in the United States since March 9, 2001.

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.

El Salvadorians applying for TPS must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

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. 8 C.F.R. § 244.9(a). The sufficiency of all evidence, however, 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).

As previously stated, in the above-mentioned notice of intent to deny, the applicant was requested to submit evidence establishing her continuous physical presence in the United States since March 9, 2001, and her continuous residence in the United States since February 13, 2001.

The director determined that the applicant, in response to the notice of intent to deny, failed to submit evidence to establish her continuous residence and her continuous physical presence in the United States during the requisite timeframes and denied the application on May 21, 2004.

On appeal, counsel presented a statement from the applicant, which indicates that the applicant entered the United States "on or about January of 1994, at or near Mexico without inspection." Counsel also provides: a previously submitted letter dated February 1, 2004, from [REDACTED] who states that the applicant has been living at [REDACTED] Union City, New Jersey from "April 1995 to present day;" a copy of the applicant's birth certificate, which was previously submitted; a copy of a previously submitted Thriftway Kings Pharmacy card dated June 6, 1997; a copy of a previously submitted bank statement dated "4/26/99 thru 6/30/99;" a copy of a receipt from "Poto Professional" with an illegible date; and, a letter dated September 6, 2003, from the district manager of Giant Express, Inc., who states that the applicant has used their services on March 9, 1998, April 20, 1998, and May 4, 1998.

No additional documentary evidence has been presented on appeal to establish that the applicant has been continuously residing in the United States since February 13, 2001, and that she has been continuously physically present in the United States since March 9, 2001. The documentation contained in the record begins prior to the qualifying timeframes. In addition, the letter from [REDACTED] who states that the applicant has been living at the above-mentioned address since 1995 to February 1, 2004, is questionable, as the record indicates that the applicant last entered the United States on December 7, 2002. Further, the applicant makes no mention of her entry into the United States and apprehension by the U.S. Border Patrol on December 7, 2002, at Brownsville, Texas. 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, 591-92 (BIA 1988). 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. *Id.*, 582, 591.

Inasmuch as the applicant did not enter the United States until December 7, 2002, she could not possible establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant is unable to meet the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2 (b) and (c). Consequently, the director's decision to deny the application for temporary protected status for these reasons 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 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.