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

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

M1

[redacted]

FILE: [redacted] [EAC 04 066 51627] Office: Vermont Service Center Date: MAR 27 2006

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:

[redacted]

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 case will be remanded.

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 her eligibility for TPS late registration.

On March 29, 2004, the applicant was requested to submit evidence to establish her eligibility for TPS late registration. In addition, the applicant was requested to submit evidence establishing her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application (January 5, 2004). In response, the applicant submitted some evidence regarding her residence and physical presence in the United States. The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS late registration. It is noted that the director stated that the applicant "provided evidence to support [her] claims of residence and presence in the United States."

On appeal, the applicant states that the reason she did not apply for TPS was because she was told by others not to send anything, as she would be deported. The applicant also claims that she did not have money because she did not have a steady job. In addition, she states that she does not have documentation, such as rent or medical receipts because she did not have any legal documents. The applicant also states that her friends and co-workers can attest to her residence in the United States since her arrival; however, a review of the record reflects that she did not provide any additional evidence along with her appeal.

The record of proceedings confirms that the applicant filed the instant 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 fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above. A review of the record of proceedings reflects that the applicant's asylum application has been pending with the Service since January 23, 1996. However, the record does not reflect that the applicant had established her continuous residence and continuous physical presence during the qualifying time periods. In particular, the record contains questionable affidavits from acquaintances submitted by the applicant in response to the director's March 29, 2004 request. In addition, there are considerable gaps in the submitted evidence that does not reflect continuous residence or continuous physical presence in the United States up to the date of filing the instant application (January 5, 2004). The director erred in stating that the applicant has provided evidence to establish her qualifying continuous residence and continuous physical presence in the United States.

Therefore, the case will be remanded and the director shall consider the applicant's response in the issuance of a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for entry of a new decision.