



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date: APR 30 2007

[WAC 05 222 79088]

IN RE:

Applicant:



APPLICATION:

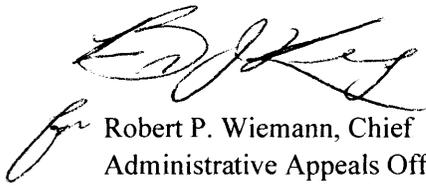
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254.

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 record reveals that the applicant filed a late initial TPS application on May 10, 2005, under CIS receipt number WAC 05 222 79088. The director denied the application on May 2, 2006, because the applicant failed to establish that she was eligible for late initial registration for TPS. The director noted that the applicant did not qualify for late registration as the spouse of a TPS registrant as the applicant was not married to a TPS registrant prior to, or during, the initial registration period.

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 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial application with Citizenship and Immigration Services (CIS) on May 10, 2005.

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.

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).

With her TPS application, the applicant submitted photocopies of:-

- An untranslated document in Spanish;
- A Marriage Certificate for the applicant, dated January 2, 2004;
- A Certificate of Birth for her child, issued on March 1, 2005;
- An Employment Authorization Card for [REDACTED] which expired on March 9, 2005;
- A Social Security Card for [REDACTED];
- An apartment Lease Contract, dated February 23, 2001;
- Form 1040A, Individual Income Tax Returns (page 1) for 2003, and 2004;
- Five non-photo City of Houston benefit cards;
- An Internal Revenue Service letter, dated May 24, 2004;
- Medical records dated in March 2004; and,
- 13 Medicaid eligibility Identification forms, issued in 2004, and 2005.

On appeal, the applicant states that she had been living together, in a common law relationship, with her husband, in El Salvador, since 1985, and they were legally married on January 2, 2004. With her appeal, in an attempt to establish eligibility for late initial registration, the applicant submits the birth certificate for three of her children who were born in El Salvador in 1988, in 1992, and in 1995, and for a child born in Houston, Texas, on April 12, 2004; a TPS application for [REDACTED], the applicant's husband; and, some of the same evidence earlier submitted.

The applicant's claimed common law marriage to a TPS registrant has not been established. Although the applicant claimed that she has had a common law marriage to [REDACTED] since 1985, a review of the A-File for [REDACTED] reveals that [REDACTED], listed his marital status as "single" on his TPS applications, Form I-821, filed in 2001, in 2002 and in 2003; and on his Form I-765, Application(s) for Employment Authorization, filed in 2001, 2002, and in 2003. On these TPS applications, in Part 3, under "Information about your spouse and children (if any)," [REDACTED] inserted "N/A" where the application called for the spouse information. This casts doubt on whether the applicant and [REDACTED] had a common law marriage prior to February 2001, as the applicant claims. 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). The applicant has failed to submit any objective evidence to explain or justify the discrepancies within her TPS application. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish her eligibility for late initial registration as the spouse of a TPS registrant.

The evidence of record does not mitigate the applicant's failure to file her Form I-821, Application for Temporary Protected Status, within the initial registration period.

As noted by the director, the applicant was not married to a TPS registrant prior to, or during the initial registration period. The record reveals that the applicant married [REDACTED] on January 2, 2004, after the initial registration period. While the regulations may allow spouse of aliens who are TPS eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements of eligibility for TPS.

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 decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the requisite period. It is noted that the applicant stated in her initial Form I-821, Application for Temporary Protected Status, and on his initial Form I-765, that she entered the United States on January 12, 2001. However, review of the A-file for [REDACTED] (referenced above) reveals that on April 3, 2001, he sent funds to the applicant in El Salvador. 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). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the entry dates in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish her

continuous residence and continuous physical presence in the United States during the requisite period. Therefore, the application will also be denied for these reasons.

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.