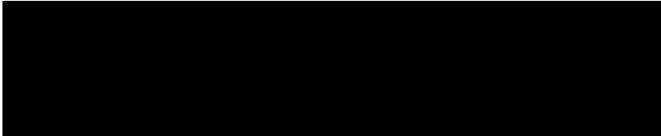




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 07 005 78474]

Office: VERMONT SERVICE CENTER

Date: JAN 03 2008

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
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 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 she was eligible for late initial registration. The director also found that the applicant had not established that she had continuously resided in the United States since February 13, 2001 or that she had been continuously physically present in this country since March 9, 2001.

A Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted by an individual who indicates she is a family member. However, this is not authorized to represent the applicant because she has not submitted a written declaration that she is appearing without direct or indirect remuneration as required by the regulations at 8 C.F.R. § 292.1(a)(3)(ii). Therefore, the applicant shall be considered as self-represented and the decision shall only be furnished to her.

On appeal, the applicant indicates that although she stated on her application she had arrived in the United States in March 2001, she actually arrived in Laredo, Texas, on January 11, 2001 and then went to Dallas, Texas, on March 10, 2001. She indicates she is applying as the spouse of an applicant who has already been approved for TPS. The applicant submits additional documentation in support of her claim of continuous residence and continuous physical presence in the United States.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her application with Citizenship and Immigration Services on October 5, 2006.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The record shows that the applicant and her spouse married in El Salvador on August 22, 1996. Review of his file under [REDACTED] reveals that he has been granted TPS. While regulations allow the spouse of a TPS beneficiary to file an application after the initial registration period, these regulations do not relax the requirements for eligibility for TPS. The applicant is still required to meet the continuous residence and continuous physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). On appeal, the applicant submits a number of documents to support her claim to continuous residence and continuous physical presence

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during the required periods, including an affidavit from her husband, ██████████, dated March 15, 2007. ██████████ states that his wife resided in Laredo, Texas, from January 11, 2001 when she arrived in the United States until March 9, 2001 and that she arrived in the city of Dallas, Texas on March 10, 2001. However, on his Form I-821, Application for Temporary Protected Status, that he filed on August 20, 2001, he stated that his wife was residing in Ahuachapan, El Salvador. On his Form I-821 that he filed for re-registration that he signed on September 9, 2002, he also reported that his wife was living abroad. In this case, the applicant has failed to establish her continuous residence and continuous physical presence as required by regulations at 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS is 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 cited 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.