



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[WAC 05 221 90472]

Office: California Service Center

Date: JAN 14 2008

IN RE: Applicant:

[REDACTED]

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

ON BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California 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, California Service Center, and is now before the Administrative Appeals Office 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 an initial TPS application on August 8, 2002, under CIS receipt number SRC 02 241 54243. The director denied that application, on June 23, 2003, because the applicant failed to appear for fingerprinting. The director, therefore, considered that application abandoned. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 9, 2005, under CIS receipt number WAC 05 221 90472, and indicated that she was re-registering for TPS. The director denied that application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

On appeal the applicant states that she is eligible for late initial registration as the spouse of a TPS registrant. With her appeal, the applicant submits additional documentation, including her marriage certificate which indicates that she married [REDACTED] on May 24, 2000, in El Salvador.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

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 as 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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence 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.

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 this TPS application on May 9, 2005.

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).

It is noted that the applicant is the spouse of a TPS registrant, and therefore, she is eligible for late registration for TPS. The applicant has established that she has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). However, while the regulations may allow spouses 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.

Beyond the decision of the director, the applicant failed to establish the requisite continuous residence and continuous physical presence in the United States.

The applicant failed to submit sufficient evidence to establish that she continuously resided in the United States since February 13, 2001, and that she had been continuously physically present since March 9, 2001. Although the applicant stated on her TPS applications that she has been in the United States since August 28, 2000, a review of the file, [REDACTED] for [REDACTED] her husband, reveals that he indicated on his initial TPS application, filed on April 10, 2001, that the applicant was residing in El Salvador at the time. In addition, the applicant submitted a photocopy of the biographic page of her passport, which was issued in El Salvador, that appears to have been altered. Specifically, the year of issue of the passport has been altered to indicate that the passport was issued in 2000. These discrepancies cast doubt on whether the applicant's claimed entry into the United States is true. 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 her claimed date of entry and the evidence of 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. Consequently, for this additional reason, the director's decision to deny 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 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.