

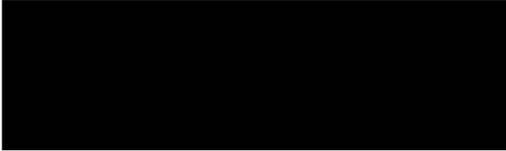
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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**U.S. Citizenship
and Immigration
Services**



FILE:



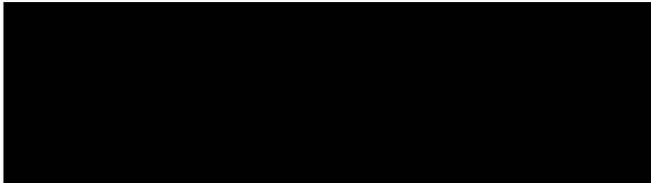
Office: VERMONT SERVICE CENTER

Date: JAN 24 2008

[EAC 03 169 52450]

INRE:

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.


For Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Yermont Service Center (YSC). An appeal from that decision was dismissed by the Administrative Appeals Office (AAO) on appeal. The case is now before the AAO on a motion to reopen. The motion to reopen will be granted and 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 applicant filed her Form 1-821, Application for Temporary Protected Status, on April 24, 2003, after the initial registration period for Salvadorans had ended. The director denied the application because the applicant failed to establish she was eligible for late registration. The director also found that the applicant failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. An appeal from the denial decision, filed on February 11, 2004, was dismissed by the AAO on May 11, 2007.

The applicant filed the current motion to reopen on July II, 2007. On motion, the applicant submits a brief statement and additional documentation.

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 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
- (t)
 - (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.

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. An extension of the designation for El Salvadorans TPS was granted by the Attorney General through 2003. Subsequent extensions have been granted, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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 initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with Citizenship and Immigration Services (CIS) on April 24, 2003.

The record of proceedings confirms that the applicant filed her 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 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 that she 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).

On August 19, 2003, the director issued a Notice of Intent to Deny (NOID) requesting the applicant 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 establishing her qualifying continuous residence and continuous physical presence in the United States, and evidence of her nationality and identity. In response, the applicant provided:

1. a notarized statement from [REDACTED] stating that she had known the applicant for "approximately 6 years;"
2. an undated handwritten notarized statement from [REDACTED] stating that he had known the applicant since 1997;
3. a letter dated August 29, 2003, from [REDACTED] and [REDACTED] stating that they had known the applicant for eight years, and that the applicant had cared for their son in the past;
4. documentation relating to an April 7, 1997, civil court case involving the applicant and a cleaning firm;
5. an Employment Authorization Document (EAD) issued to [REDACTED] valid from March 10, 2003 to September 9, 2003;
6. an insurance policy issued to [REDACTED] on December 23, 2002; and,
7. discharge/medication instructions issued to the applicant on December 26, 2002, by Frederick Memorial Hospital, Frederick, Maryland.

The director denied the application on January 12, 2004, determining that the applicant had failed to establish her eligibility for late registration, and her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant filed an appeal from that decision on February 11, 2004. On appeal, the applicant submitted:

1. a notarized statement from [REDACTED] stating that he had known the applicant since January 2001; and,
2. an EAD issued to [REDACTED], valid from September 29, 2003 to March 9, 2005.

The AAO, in a decision dated May 11, 2007, found that although the applicant had submitted documentation indicating **that** [REDACTED] was an alien currently eligible to be a TPS registrant, she had failed to provide a marriage certificate showing that a marital relationship existed prior to or during the initial registration period. The AAO concluded that the applicant had not submitted sufficient evidence to establish that she had met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). The AAO also concluded that the applicant had not submitted sufficient evidence to establish her qualifying continuous residence in the United States since

February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, on May 11, 2007, the appeal was dismissed and the denial of the application was affirmed.

On motion to reopen, the applicant submits photocopies of her El Salvadoran passport, with a photo-r birth certificate, with English translation, containing a notation that she was married to in El Salvador on December 10, 1986. Therefore, the applicant has established that, during the initial registration period, she was married to an alien currently eligible to be a TPS registrant. Consequently, the director's decision to deny the application on the ground that the applicant failed to establish her eligibility for late registration will be withdrawn. In addition, the applicant has overcome the AAO's determination that the applicant had failed to establish her nationality and identity.

On motion, the applicant also submits photocopies of her and her spouse's Federal and Maryland State tax returns for the years 2001 through 2004, and 2006, and her own Form W-2, Wage and Tax Statement, for the years 2003, 2004, and 2006.

The applicant claims to have lived in the United States since October 1995, and has submitted a series of affidavits from acquaintances who claim to have known the applicant for various lengths of time. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence and physical presence.

The tax returns for 2001 and 2002 can be given little weight, as they are not accompanied by Internal Revenue Service (IRS) Forms W-2, or certification of filing with the Federal, state, or local government, as required by 8 C.F.R. §244.9(a)(2)(i). Even if certified as filed, the Form 1040 shows earnings for 2001, but does not offer corroborating evidence to show when the applicant worked during that year.

It is concluded that the applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing her application on March 9, 2005. Therefore, the applicant has failed to establish that she meets the eligibility criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for these reasons will be affirmed.

An alien applying for TPS 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. The previous decision of the AAO, dated May 11, 2007 is affirmed.