

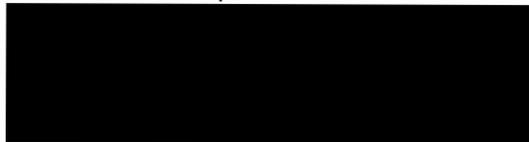


U.S. Citizenship
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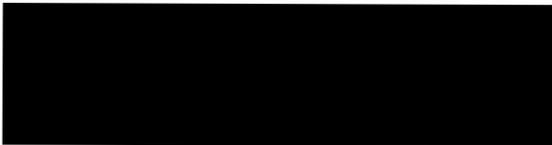


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: AUG 04 2009
[EAC 06 222 76543]

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting 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 claims to be 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 determined that the applicant failed to establish that she was eligible for filing her TPS application after the initial registration period from March 9, 2001 through September 9, 2002. The director also determined that the applicant failed to establish that she was a native and citizen of El Salvador. The director, therefore, denied the application.

On appeal, counsel for the applicant claims that the applicant met her burden of proof for late initial filing; that the applicant has established that she is a citizen of El Salvador; and, that she has provided clear evidence that she has continuously resided in the United States since February 13, 2001.

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.

The term *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 term *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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 10, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed her initial application on May 8, 2006.

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 United States Citizenship and Immigration Services (USCIS). 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 record of proceeding 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 from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On September 13, 2006, the applicant was provided the opportunity to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided copies of her Employment Authorization Cards dating from August 26, 1999 to April 30, 2005 based on an asylum application. USCIS records indicate the application for asylum was dismissed on May 10, 2004. The TPS application was received on May 16, 2006, clearly beyond the 60 day limit for late initial filing for TPS. Therefore, the director denied the application.

On August 7, 2007, the applicant was provided the opportunity to submit evidence establishing her nationality. In response, the applicant submitted a copy of an original El Salvadoran birth certificate, with English translation as well as a personal notarized statement. The director determined that the applicant had not established that she is a national of El Salvador and denied the application on this basis as well.

On appeal, counsel for the applicant claims that the applicant has met her burden of proof for late initial filing for TPS. According to counsel, the applicant had an asylum application pending during the initial registration period. Counsel also claims that the asylum application is not the subject of a final decision by an Immigration Judge nor has the applicant been ordered removed. Therefore, the qualifying condition should not be considered to have expired. However, while a pending asylum application technically rendered her eligible for late registration, regulations at 8 C.F.R. § 244(g) also require a late registration to be filed within a 60-day period immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2). Contrary to counsel's assertion, the applicant did not file an asylum application on her own, but was included on her husband's asylum application. USCIS records indicate the applicant's husband received Legal Permanent Status through another avenue. She therefore has no appeal rights regarding the denial of his asylum application and the qualifying condition is considered to have expired or terminated when his application was dismissed on May 10, 2004. Consequently, the applicant was required to file her initial TPS application on or before July 9, 2004. The applicant did not submit her TPS application until May 8, 2002, almost two years after the expiration of the 60 day limit for late initial filing.

The applicant has not submitted sufficient 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.

In regards to her nationality, the applicant submitted a Guatemalan birth certificate, with English translation and a Guatemalan marriage certificate in support of her husband's asylum application. In her statement submitted in response to the August 7, 2007 notice, the applicant claimed that she relied on the work of her immigration consultant; that she could not read or write English; and, therefore did not know what documentation he submitted in support of the application. The

applicant also stated that her parents are natives and citizens of El Salvador and she has not intentionally made any misrepresentations to the government. According to the applicant, any references to Guatemala are the result of the immigration consultant's conduct. Even accepting the applicant's claim that she does not read or write English, she does not claim that she can not read or write Spanish. Therefore, she should have been aware that documents in Spanish indicating that she was a native and citizen of Guatemala were being submitted with her application. It is also noted that the Guatemalan birth certificate indicates the applicant was born in Jutiapa, Guatemala on September 12, 1960 and the El Salvadoran birth certificate indicates the applicant was born in Ahuachapán, El Salvador on December 12, 1960. The applicant also indicated on her asylum application that she lived in Jutiapa, Guatemala until March 1997. Her husband indicated on his asylum application that his last address prior to coming to the United States was in Quetzaltenango, Guatemala. The applicant also indicated on her asylum employment authorization application that she entered the United States in May 1997. However, on her employment authorization application filed with her TPS application, she indicated that she entered the United States on May 10, 1998. It is further noted that on her TPS application, she states that she is single and indicates on pg. 2, part 3 of the application "N/A" in the block for prior husbands/wives. These discrepancies have not been satisfactorily explained. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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.