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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **OCT 28 2009**
[EAC 08 013 50892]

IN RE: Applicant: [REDACTED]

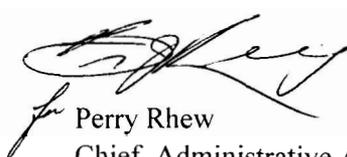
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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.

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).


Perry Rhew
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 she: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that she did not submit her TPS application on time because her husband told her she would be deported if she applied. The applicant claims that she has lived in the United States since 1997 and has never left this country. The applicant also submits evidence in an attempt to establish her qualifying 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 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, 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.

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 this application on January 17, 2007.

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 first issue in this proceeding is whether the applicant is eligible for late registration.

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 March 17, 2008, 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 was also requested to submit evidence establishing her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that the reason she did not submit her TPS application during the initial registration period was because she believed her husband when he lied to her and told her she would be deported if she applied for TPS. The applicant also states that she has lived in the United States since November 1997 and requests that her case be reopened. The applicant also submits evidence in an attempt to establish her continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file her TPS application within the initial registration period. The applicant has not submitted 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 conclusion that the applicant failed to establish her eligibility for late registration will be affirmed.

The second and third issues in this proceeding are whether the applicant has established her continuous residence in the United States since February 13, 2001 and her continuous physical presence in the United States since March 9, 2001.

In support of her TPS application, the applicant submitted:

1. A personal statement; copies of a birth certificate, with English translation, showing the applicant's name as [REDACTED] and an El Salvadoran passport # [REDACTED] issued in Los Angeles on March 22, 2005, both indicating the date of birth as July 1, 1973; and a Form I-94, Arrival and Departure Record, dated November 6, 1997, in the name of [REDACTED], indicating the country of citizenship as Mexico.
2. Copies of pay stubs from Toys "R" Us in the name of [REDACTED] dated December 12, 1997 and December 19, 1997.

3. Money transfer receipts in the name of [REDACTED] dated January 1, 1998, and November 16, 1999.
4. 2001, 2003, 2004, and 2006 Form W-2, Wage and Tax Statements, in the name of [REDACTED]
5. A copy of a birth certificate indicating the applicant's daughter was born on December 18, 1999. The name of the mother of the child is shown as [REDACTED] with a birth date of May 27, 1974. The birth certificate was signed by [REDACTED] certifying that the information provided therein had been reviewed and was true and correct.

As stated above, the applicant was requested on March 17, 2008, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

6. A copy of an El Salvadoran passport, [REDACTED] issued in Los Angeles, California on November 5, 2007, in the name of [REDACTED] showing a July 1, 1973 date of birth.
7. Copies of a November 14, 1998 receipt from [REDACTED] Inc., issued in the name of [REDACTED]
8. A State of California marriage license issued to the applicant and [REDACTED] on April 19, 2005. The applicant states her name as [REDACTED], and her date of birth as July 1, 1973, and indicates she had not been previously married.
9. Copies of Earnings Statements from Winchell's Donut Houses in the name of [REDACTED] dated April 11, 2001, May 9, 2001, May 23, 2001, June 6, 2001, July 18, 2001, August 1, 2001, August 15, 2001, March 27, 2002, October 8, 2003, November 19, 2003, December 31, 2003, and February 11, 2004, March 24, 2004, June 2, 2004, April 25, 2007, May 23, 2007, July 3, 2007, November 21, 2007, and December 5, 2007.
10. Money transfer receipts in the name of [REDACTED] dated November 17, 2003 and March 15, 2004.
11. A Sprint bill in the name of [REDACTED] dated June 24, 2004.
12. A document in Spanish with no English translation.

The director concluded that the applicant had failed to establish continuous residence and continuous physical presence in the United States during the requisite periods and denied the application. On

appeal, the applicant submits:

13. Copies of a City of South Gate, California Criminal Record Check for [REDACTED] indicating that no criminal record was found for a November 21, 2000 arrest for "Spousal/cohabitant Abuse."
14. Copies of money transfer receipts in the name of [REDACTED] dated March 16, 2001, March 16, 2001, September 8, 2003, November 17, 2003, and March 15, 2004.
15. A 2007 Form W-2, Wage and Tax Statement.

The pay stubs from Toys "R" Us indicate the applicant worked prior to the dates to establish continuous residence and continuous physical presence in the United States. The birth certificates of her daughter and the receipt from [REDACTED] also indicate her presence in the United States prior to February 13, 2001. The tax documents indicate that the applicant was employed during those years, but can not establish her continuous residence and continuous physical presence. The Earnings Statements and money transfer receipts are all dated subsequent to the dates to establish continuous residence and continuous physical presence in the United States. There is no evidence for the period from August 16, 2001 to March 26, 2002; and from March 27, 2002 to October 8, 2003.

It is noted, that in her personal statement that was submitted with her initial TPS application, the applicant stated that she was told by [REDACTED] that she was ineligible for TPS. However, on appeal, the applicant claims that she did not apply for TPS during the initial registration period because her husband told her she would be deported if she applied. This discrepancy also has not been satisfactorily explained.

The applicant has not submitted sufficient evidence to establish her qualifying residence since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001 to the date the application was filed. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

It is noted that the applicant has submitted documents with four different names and at least two different birthdates. In addition, the applicant has submitted a Form I-94, Arrival and Departure Record, which indicates that she stated her citizenship as Mexican when she first entered the United States. The record contains additional documentation indicating that the applicant is a citizen of Mexico. The Form I-862, Notice to Appear, issued on October 28, 1997, in connection with her entry without inspection at or near Brownsville, Texas on October 25, 1997 shows the applicant's name as [REDACTED] and her nationality as Mexican. In addition, the record contains a December 20, 1997 Request for Change of Venue, from the applicant in which she states: "I am from Renosa, Tam., Mexico, Colonia, Hidalgo." 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). While the applicant has submitted two passports and a birth certificate that indicate she is from El Salvador, it must be concluded that the applicant has failed to submit sufficient evidence to establish her nationality and identity the above discrepancies have not been satisfactorily explained.

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.