

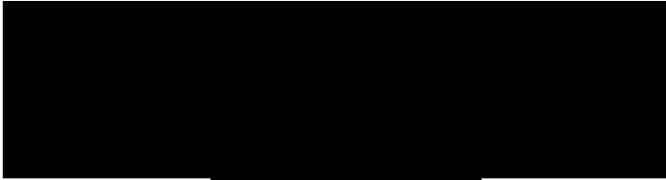
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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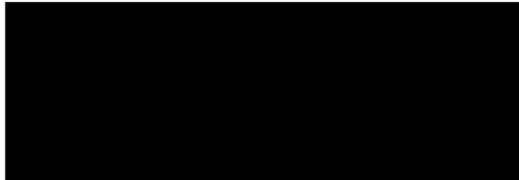
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FILE: [REDACTED]
[EAC 03 260 54633]

Office: VERMONT SERVICE CENTER

Date: **JAN 12 2010**

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.

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. A subsequent appeal was remanded by the Director, Administrative Appeals Office (AAO). The Director, Vermont Service Center, subsequently denied the application, which is now before the AAO on appeal. The appeal will be dismissed.

The applicant is 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 resubmits evidence previously provided in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period on March 29, 2001. That application was denied on May 24, 2002, for failure to respond to a request for evidence to establish her eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 17, 2002. The director denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. In addition, the director determined that the applicant failed to establish continuous residence and continuous physical presence in the United States during the qualifying period. Since the applicant did properly file an application during the initial registration period, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on March 29, 2001. That initial application was denied by the director on May 24, 2002. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

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.

The applicant filed a subsequent Form I-821 on September 17, 2002. Since the initial application was denied on May 24, 2002, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 September 17, 2002.

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 November 5, 2003, 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 nationality and identity, 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 of her nationality and identity and submitted evidence in an attempt to establish her 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 initial appeal, the applicant submits copies of a lease agreement dated September 20, 2000 in the name of [REDACTED], a Southern Maryland Corporation Residential Lease in the applicant's name dated March 28, 2002; a letter from [REDACTED] a Landlord Verification Form; and an EPA Worker Recertification Identification Card issued on November 25, 2002. With the current appeal, the applicant resubmitted evidence previously provided 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 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 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 initial TPS application, the applicant submitted copies of her birth certificate, with English translation and her passport, issued in Washington, D.C. on June 26, 2000. The applicant also submitted copies of the birth certificates of her children born on December 7, 1997 and January 6, 1999; and a UVA Health Sciences Center Primary Care Pharmacy Consent Form and a UVA Health Sciences Center Financial Services Request Form, both dated March 16, 1999. In support of the current TPS application, the applicant submitted; pay stubs dated March 6, 2001; and a Maryland Identification Card issued on July 19, 2001.

As stated above, the applicant was requested on November 5, 2003 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. Copies of pay stubs dated March 6, 2001, September 19, 2001, October 10, 2001, October 18, 2001, October 25, 2001, November 8, 2001, December 6, 2001, December 13, 2001, and December 27, 2001.
2. Copies of Asbestos Training Course Identification Cards issued on April 14, 2000, and July 7, 2001; a Refund Check from the Comptroller of Maryland dated February 27, 2002; and a letter from [REDACTED] Cool Spring Secretary Pre-K Program.

The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application. On the current appeal, the applicant resubmits evidence previously provided.

The passport and birth certificate establish the applicant's identity and nationality. [REDACTED] states that the applicant's daughter, [REDACTED], was registered at Cool Spring Elementary School since September 2, 2000. However, based on the birth certificate provided by the applicant, her daughter would have been less than two years old when she registered for school. This discrepancy has 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 September 20, 2000 Acosta lease agreement is accompanied by a statement from [REDACTED] and a Landlord Verification Form signed by [REDACTED] and the applicant. In his statement, [REDACTED] said that he subleased his apartment to the applicant from March 1, 2001 to March 31, 2002. However, the lease agreement clearly states that the applicant was prohibited from subleasing the unit. Furthermore, neither the applicant nor [REDACTED] has provided any contemporaneous evidence, other than the agreement, to support the claim that the unit was subleased.

The birth certificates of the applicant's children, the UVA forms, one of the Asbestos ID Cards all indicate that the applicant was present in the United States prior to the qualifying periods. The Maryland refund check was for 2001, but it cannot establish the applicant's requisite continuous residence and continuous physical presence. The remaining evidence is dated subsequent to the dates to establish continuous residence and continuous physical presence. Consequently, this evidence is of little or no probative value.

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.

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.