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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



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[EAC 07 097 70094]

Office: VERMONT SERVICE CENTER

Date: **MAR 08 2010**

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:

[REDACTED]

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 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, counsel for the applicant states that the plain language of the TPS statute means that the applicant is eligible for TPS.

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 9, 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 5, 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 reflects that the applicant filed a TPS application under receipt number SRC 03 031 57148 on November 4, 2002, after the initial registration period for El Salvadorans had ended. The director denied the application because the applicant had not established eligibility for late initial registration.

The application filed an untimely motion to reopen which was denied by the director on November 18, 2004. The director noted that even if the applicant had filed a timely motion, she would not have overcome the basis for the denial of the TPS application because she had not submitted evidence of eligibility for late initial registration. The applicant filed an application for re-registration under receipt number WAC 05 204 75673 which was denied by the director on August 16, 2005 because the applicant had not been granted TPS and was, therefore, not eligible for re-registration.

The record of proceeding confirms that the applicant filed this 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 July 1, 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, counsel states that the applicant is eligible based on the plain language of the Act. According to counsel, "...the statute requires the alien register for TPS during a registration period of not less than 180 days. The statute does not specify that the alien must register during the first registration period or he may not then register. The plain language of the statute just requires registration during a registration period." Counsel also contends that "Applicant applied for late initial registration because her husband is currently eligible to be a TPS registrant. Her husband is not currently a TPS registrant, but that is not what is required. Just simply that the husband is 'currently eligible to be a TPS registrant.'...Applicant's TPS was denied because she did not marry her husband during the 2001 initial registration period. That is not required anywhere in the statute."

Counsel is incorrect in regards to all three contentions. The statute clearly and plainly states that the applicant must apply for TPS during the initial TPS registration period **or** during any subsequent registration period if he or she meet criteria set forth in the statute. Therefore, the applicant can not simply choose which registration period he or she wishes to apply for TPS. In addition, while USCIS regulations may allow spouses of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. Those requirements include the applicant being in the qualifying status at the time of the initial registration period, or he or she must file an application within 60 days after the termination of that status. Furthermore, the applicant must be the spouse of a TPS beneficiary, which means that the applicant's spouse must have applied for the designated benefit, not simply be eligible. If the individual has not applied for the benefit, his or her eligibility has not been established and no benefit conveys to his or her

spouse. 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.

As stated above, the applicant was requested on July 1, 2008 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted statements from [REDACTED] and [REDACTED]

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 appeal, the applicant fails to submit any additional evidence or documentation

[REDACTED] stated that the applicant worked as her babysitter from October 1, 2000 until July 31, 2002. [REDACTED] stated that the applicant worked for his company since November 1, 2002. However, these statements have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of her employment. It is further noted that the affiant did not indicate the applicant's duties of employment. Furthermore, [REDACTED] can only attest to the applicant's presence in the United States until July 31, 2002 and [REDACTED] can only attest to the applicant's presence in the United States since November 1, 2002. [REDACTED] stated that the applicant has lived at her house since August 1, 2002. This statement also has little evidentiary weight or probative value. These statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided.

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.