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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



M<sub>1</sub>

DATE: Office: VERMONT SERVICE CENTER

JAN 13 2012

FILE:



IN RE: Applicant:



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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 director denied the application because the applicant failed to establish: 1) her true date of birth; 2) she was eligible for late registration; 3) her continuous residence in the United States since February 13, 2001, and 4) her qualifying continuous physical presence in the United States since March 9, 2001.

On appeal, counsel asserts that the dates of birth of August 10, 1982 and January 21, 1981, relate to the applicant, and that the confusion was due to a minor innocent error. Counsel submits an affidavit from the applicant and documentation from a medical professional to establish the applicant's true date of birth.

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 Secretary 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 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 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until March 9, 2012, 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 U.S. 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 AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant filed her initial TPS application [REDACTED] on June 14, 2002. Along with her application, the applicant submitted copies of her birth certificate with English translation and her El Salvadoran identification card (cedula), which reflect that she was

born on August 10, 1982. On December 2, 2002, the Director, Nebraska Service Center, denied the application because the applicant failed to establish continuous residence and continuous physical presence in the United States during the requisite periods. Specifically, the director determined that some of the evidence provided appeared altered and, therefore, shed doubt on the remaining evidence. No appeal was filed from the denial of that application.

The applicant filed the current application on February 3, 2011.

The first issue to be addressed is whether the applicant has established her true date of birth.

Along with her TPS application, the applicant submitted copies of her birth certificate with English translation and her El Salvadoran passport, which reflect that she was born on August 10, 1982. In an attempt to establish her continuous residence and continuous physical presence in the United States, the applicant submitted medical documents for the period from June 2001 through 2008, reflecting her date of birth as January 21, 1981. On September 26, 2008, the applicant submitted a request to One World Community Health Center in Omaha, Nebraska to have her date of birth changed to August 10, 1982. The applicant submitted a letter dated October 19, 2010, from a medical doctor, [REDACTED] who indicated that an individual named [REDACTED] with a date of birth of August 10, 1982, has been a patient since January 13, 2001.

The director determined that [REDACTED] had provided services to the applicant since January 13, 2001, "then their patient records should reflect a change in date of birth." The director, citing *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), determined that the misrepresentation of the applicant's date of birth over a period of several years raised questions of credibility on some of the documentation presented in an attempt to establish her continuous residence and continuous physical presence. Accordingly, on July 6, 2011, the director denied the application.

On appeal, counsel submits an affidavit from the applicant, who asserts her parents told her that she was born on January 21, 1981, and it was not until she received her birth certificate from El Salvador, that she realized that her date of birth was August 10, 1982. The applicant asserts that when she became pregnant and was seeking assistance, she was asked by the health and human services department to present her birth certificate. The applicant states, in pertinent part:

When I took my birth certificate to the Department of Health and Human Service they mentioned the different dates because I had given the January 21, 1981 and because my birth Certificate indicated August 10, 1982. They didn't make a big deal out of this and corrected the information.

Counsel also provided a letter dated August 24, 2011, from [REDACTED], who indicated, in pertinent part:

[REDACTED] changed her Date of birth that we had in file ever since her first visit in 06/21/01 back in September 26, 2008. Her prior Date

of Birth was 01.21/1981. She presented adequate proof that her date of birth was 08/10/1982. Our current policy does not allow us to change prior paper work including visit notes, lab results, x-ray results, etc. to a new updated Date of birth.

Based on the applicant's identity documents, her affidavit and the letter from [REDACTED] the applicant has overcome the credibility issues surrounding her date of birth. Therefore, the director's finding on this ground will be withdrawn.

The second and third issues to be addressed 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.

Along with her current application, the applicant submitted:

- A letter dated November 16, 2010, from [REDACTED] who indicates that he has known the applicant since 2001 and that the applicant takes care of his child.
- A letter dated November 12, 2010, from [REDACTED] who indicated that the applicant has been an active parishioner of the church since 2007. The affiant also indicated that the applicant was an active parishioner [REDACTED] for several years before it closed in 2007.
- A letter dated October 19, 2010, from a medical doctor [REDACTED] of [REDACTED] who indicated that the applicant has been a patient since January 13, 2001.
- Envelopes and receipts that appear to have been altered.
- Medical documents from [REDACTED] regarding Medicaid eligibility for the period from September 1, 2001 through December 30, 2001.
- Her children's immunization records, which reflect vaccinations given from March 14, 2002 through October 19, 2010.
- Medical documentation for the period from June 2001 through September 2010.

A review of the documents submitted throughout the application process does not establish with reasonable probability that the applicant has been continuously residing in the United States since February 9, 2001 and has been continuously physically present since March 13, 2001. Specifically:

- The letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during her membership at the church.

- The letter from [REDACTED] lacks probative value as no supporting documentation, which would add credibility to his letter, was provided by the applicant.
- [REDACTED] in his affidavit, claims to have known the applicant since 2001, but failed to state the applicant's place of residence during the requisite period. The affiant does not provide sufficient detail to establish that he had an ongoing relationship with the applicant that would permit him to know of the applicant's whereabouts and activities throughout the requisite periods.
- The receipt purportedly issued by [REDACTED] on January 12, 2001, has been altered as the same receipt was submitted with the initial application and it was dated December 21, 2001.
- The applicant submits copies of the same envelope [REDACTED] purportedly postmarked on April 5, 2000 and a prescription from [REDACTED] purportedly dated March 21, 2001, which were discredited by the director in the decision dated December 2, 2002. In that decision, the director noted that the envelope appeared to have been altered as the second zero (designating the year) appears to have been written over another number, and the date on the prescription appears to have been altered. The applicant has not addressed these findings.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, supra*.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted is not sufficient to establish that the applicant satisfies the residence (since February 13, 2001) and physical presence (since March 9, 2001) requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

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

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed the current application on February 3, 2011. To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On appeal, the applicant neither addresses the finding of her ineligibility as a late registrant nor provides any evidence to establish her eligibility as a late registrant. The provisions for late registration were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period (March 9, 2001, through September 9, 2002) for the various circumstances specifically identified in the regulations. The applicant has not submitted evidence that she has met any of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration 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 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.