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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

**PUBLIC COPY**

[REDACTED]

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DATE: **MAR 23 2012** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

**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 she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel submits additional evidence in an attempt to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods.

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 parole; 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 September 9, 2013, 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 first 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. 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.

The record reveals that the applicant filed her initial application [REDACTED] on March 20, 2001. On August 6, 2001, 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. On September 28, 2001, the applicant filed an untimely appeal from the denial of that application. As the appeal was not timely filed, the director treated it as a motion.<sup>1</sup> On January 7, 2002, the director, denied the motion as no additional evidence was submitted and, therefore, it did not meet the requirements of a motion to reopen or motion to reconsider.

The applicant filed a second [REDACTED] application [REDACTED] on May 30, 2002. On January 23, 2003, 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. No appeal was filed from the denial of that application.

The applicant filed the current application on August 25, 2010.

The record contains a copy of the applicant's marriage certificate which occurred on October 20, 2001, and a copy of her spouse's employment authorization card under category A-12. As her marriage occurred during the initial registration period of March 9, 2001 through September 9, 2002, the applicant is eligible for late registration as a spouse of an alien currently eligible to be a TPS registrant. 8 C.F.R. § 244.2(f)(2)(iv). Accordingly, the director's finding that the applicant had not established late registration eligibility 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.

While the regulations may allow spouses of aliens who are TPS-eligible to file applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS; the spouse is still required to meet the residence and physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c).

The applicant filed the following documents with her previous and current TPS applications:

- A letter dated May 31, 2001, from Reverend [REDACTED] who attested to the applicant's presence "in our area" before February 13, 2001. The affiant indicated that the applicant had visited or attended his church.
- A letter dated May 7, 2002, from Father [REDACTED] coordinator of ministry to Spanish speaking in diocese of [REDACTED], who attested to the applicant's

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<sup>1</sup> The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

presence in the United States since November 2000. The affiant indicated that he saw the applicant in attendance on Sunday services.

- An additional letter dated July 25, 2005, from Father [REDACTED] who indicated that the applicant came to the United States in 2000 and that he officiated at the applicant's wedding in 2001.
- A document dated June 19, 2001, from the Social Security Administration in [REDACTED]
- Identification cards from the state of Indiana issued July 25, 2001, and August 28, 2003.
- A learner's permit from the state of Indiana issued April 18, 2002.
- A medical receipt dated July 17, 2001, from [REDACTED] in [REDACTED]
- An application for a marriage license dated October 3, 2001.
- Her children's birth certificates of March 15, 2004, and September 3, 2009.
- A Form 1040, U.S. Individual Income Tax Return, for 2001.
- An affidavit from [REDACTED] who indicated to having known the applicant since early October 2001.
- A statement dated July 18, 2005, from [REDACTED] who indicated that she had known the applicant since May 2001.

The letters from Father [REDACTED] and Reverend [REDACTED] have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 244.9(a)(2)(v). Moreover, Reverend [REDACTED] did not provide the address where the applicant resided during the period of her involvement with the church, and the address provided by Father [REDACTED] does not correspond to the applicant's place of residence in 2002.

The income tax return has little evidentiary weight or probative value as it was not certified as being filed as required in 8 C.F.R. § 244.9(a)(2)(i). Moreover, no corroborating evidence such as a wage and tax statement, Form W-2, or earnings statements in the applicant's name was provided.

The remaining documents including the filing of the initial TPS application only serve to establish the applicant's presence and residence in the United States since March 20, 2001.

On appeal, counsel submits:

- An affidavit from the applicant's spouse, [REDACTED] who indicates that he and the applicant were married on October 3, 2001 in the state of Indiana. [REDACTED] attests to the applicant's arrival into the United States on September 23, 2000, and asserts, "I went to visit her at her brother's house which was only approximately about two miles from where I lived in V [REDACTED]"
- Affidavits from the applicant's brother, [REDACTED] and sister-in-law, [REDACTED] of V [REDACTED] who attest to the applicant's arrival in the United States in September 2000. The affiants indicate that from September

2000 to October 3, 2001, the applicant resided with them in their home at [REDACTED]

- Photocopies of photographs the affiants claim were taken in December 2000.
- An affidavit from [REDACTED] of [REDACTED], who indicates to have first met the applicant in October 2000 in [REDACTED] at a soccer game. The affiant indicates that she has remained friends with the applicant since that time.

The photographs, which contained a digital date stamp of December 13, 2000, will only serve to establish that the applicant may have been present on that date in the United States; they do not establish continuous residence and continuous physical presence.

The regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. The affidavits from [REDACTED] raise questions to their credibility as the address indicated on the applicant's identification card issued on July 25, 2001, does not correspond to their address of residence. 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). Moreover, the affidavits from the affiants regarding the applicant's continuous residence and continuous physical presence in the United States in September 2000 are not supported by any credible 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.

It is determined that the documentation submitted by the applicant is not sufficient to establish that she has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001. The applicant 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 TPS on these grounds will be affirmed.

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.