



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF V-S-M-A-

DATE: OCT. 1, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of Honduras, seeks temporary protected status. *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254a. The Acting Director, Vermont Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On December 26, 2013, the Acting Director determined that the Applicant had not established qualifying continuous residence and continuous physical presence in the United States during the requisite periods due to her attempted entry without inspection into the United States on July 4, 2000.

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, 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 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. *Id.*

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. *Id.*

Persons applying for TPS offered to 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 Salvadorans has been extended several times, with the latest extension valid until September 9, 2016, 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. 8 C.F.R. § 244.9(b). To meet this burden of proof the applicant must provide supporting documentary evidence of eligibility apart from the applicant's own statements. *Id.*

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

(b)(6)

*Matter of V-S-M-A-*

The first and second issues to be addressed are whether the Applicant has established continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, in the United States.

The Applicant indicated on her TPS application that she entered the United States on March 7, 1998. The evidence of record, however, indicates that on or about July 4, 2000, the Applicant was apprehended near the [REDACTED] Texas port of entry. The Applicant, who was traveling with her daughter, admitted to a border patrol agent that she illegally entered the United States by wading across the [REDACTED]. The Applicant also admitted that she had traveled by bus from [REDACTED], Honduras to Belize, entered [REDACTED], Mexico, and then she traveled through Mexico to the Mexico/U.S. border.

On appeal, the Applicant asserts that she was falsely accused of illegal entry into the United States. The Applicant contends that she has not departed the United States since her 1998 entry, as she was merely near the border to take custody of her child. In the alternative, the applicant asserts that if she did leave the United States, her absence was brief, casual, and innocent and does not disrupt the required continuous residence and continuous physical presence requirements.

The following was submitted in an attempt to establish continuous residence prior to 2000:

- A letter from a representative at [REDACTED] Texas, which indicated that the applicant was a patient at the clinic on April 12, 1998, September 22, 1999, November 28, 1998, and June 14, 1999.
- An affidavit from [REDACTED] who asserted she became acquainted with the Applicant when the Applicant began to work in her business on January 2, 1999. The affiant asserted that the Applicant's employment ended in 2000.
- An affidavit notarized July 4, 2003, from [REDACTED] who attested to the Applicant's residence in [REDACTED] Texas since November 1998. The affiant asserted she became acquainted with the Applicant in December 1999 while the Applicant was in her employ as a housekeeper.
- An affidavit notarized July 4, 2003 from [REDACTED] who attested to the Applicant's residence in [REDACTED], Texas since December 1999. The affiant asserted that he became acquainted with the Applicant while the Applicant was in his employ as a housekeeper from December 1999 to March 2000.

The evidence cited above, however, is not sufficient to establish continuous residence and physical presence for the Applicant during the relevant time periods. The submitted affidavit from [REDACTED] states that she has been acquainted with the Applicant since December 1999. However, the affidavit also attests to the Applicant's residence in the United States since 1998. There is no explanation for this temporal discrepancy. The record contains letter from [REDACTED], an employer of the Applicant, which does not provide information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Further, no supporting evidence such as earnings statements and wage and tax statements were provided by the Applicant's employer. Similarly, no supporting evidence, such as medical records were provided to corroborate the submitted letter from [REDACTED]. The submitted affidavit from [REDACTED]

(b)(6)

*Matter of V-S-M-A-*

does not cover the entirety of the applicable time periods for continuous residence and continuous physical presence in the United States, does not meet the requirements of 8 C.F.R. § 244.9(a)(2)(i), and no corroborating evidence was submitted to support the affiant's attestation. It is noted that the Applicant provides no evidence of her place of residence from 1998 through July 3, 2000.

The Applicant has not submitted sufficient credible evidence to establish continuous residence since December 30, 1998, and continuous physical presence since February 5, 1999, in the United States. 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.

As the evidence submitted by the Applicant does not credibly establish continuous physical presence or continuous residence in the United States during the requisite time periods, it is not necessary to address whether her absence from the United States during that time period was brief, casual and innocent.

The third issue to be addressed is whether the applicant is eligible for late registration.

To meet the initial registration requirements in 8 C.F.R. § 244.2(f)(1), Honduran Applicants must have filed TPS applications during the initial registration period, January 5, 1999 through August 20, 1999. If Applicants did not file their initial TPS applications during this time period, to qualify for TPS they must meet the late registration requirements as stated above in 8 C.F.R. § 244.2(f)(2) or (g). Specifically, to qualify for late registration, the applicant must provide evidence that during the initial registration period (January 5, 1999 through August 20, 1999) the Applicant fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) 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).

The record reflects that the Applicant filed an initial TPS application on July 9, 2003, which was denied on June 18, 2004. No motion or appeal was filed from the denial of that application.

The Applicant filed the current TPS application on August 23, 2011.

In a request for evidence dated August 7, 2013, the Applicant was asked to submit evidence to establish late registration eligibility. In response, the Applicant indicated that she was married to [REDACTED], a TPS registrant, and provided a copy of a Honduran marriage certificate with English translation and the TPS registrant's employment authorization card. The marriage certificate indicates that the Applicant and [REDACTED] were married in [REDACTED], Honduras on [REDACTED], 1983.

The Acting Director determined that the Applicant had submitted sufficient evidence to establish late registration eligibility as a spouse of currently eligible TPS registrant. During the adjudication of the instant appeal, it was determined that [REDACTED] has an immigration file with USCIS, since February 1989, and his immigration file does not support a finding that he is or was married to the

(b)(6)

*Matter of V-S-M-A-*

Applicant. On his Form I-589, Application for Asylum and Withholding of Removal, and supporting documents filed in 1989, ██████████ claimed a marriage in Honduras to another individual since 1976. On his initial application and four applications for re-registration, ██████████ listed himself as single. Further, on the other applications for re-registration ██████████ claims to be married, but the name of his spouse and place of marriage are not listed.

In order to verify the authenticity of the marriage certificate submitted by the Applicant, the U.S. Embassy in ██████████, Honduras, was contacted. The Registry in ██████████ ██████████ ██████████ confirmed that the submitted marriage certificate is not authentic. Specifically, in a review of the Book of Marriages, the marriage entry that the certificate purports to attest to (Tomo no. 454) does not exist. The review also confirmed that there was no annotation of a marriage in the birth registry belonging to the Applicant and ██████████

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In a notice of intent to dismiss the appeal dated June 15, 2015, the Applicant was advised of the adverse information relating to the submitted marriage certificate. As the marriage certificate had been deemed to be fraudulent, the Applicant was advised that she had not established eligibility for late registration as a spouse of currently eligible to be a TPS registrant. 8 C.F.R. § 244.2(f)(2)(iv). The Applicant was provided the opportunity to respond before a final decision was rendered.

The Applicant, in response, asserts that she married the TPS registrant on April 9, 1983, in Honduras and that it was her good faith belief that she and her spouse had registered their marriage pursuant to civil rules and procedures of Honduras. The Applicant asserts that it was through no fault of their own that the marriage certificate was not registered by the proper authorities. The Applicant states that, as she and her spouse filed their marriage certificate with the proper authorities, they should not be penalized for clerical or administrative error. Citing to the Honduran constitution, the Applicant acknowledges that under Honduran law only a valid marriage is acknowledged by the legislature, but asserts that it is clear from the constitution that a de facto common law union between two parties is given the intent of validity. However, the record is insufficient to demonstrate that the Applicant and her spouse met the requisite requirements to be recognized by Honduras as having formed a de facto union.

In the alternative, the Applicant asserts that since residing in Texas, beginning March 7, 1998, she has been in an informal marriage with her spouse. The Applicant asserts that this informal marriage satisfies the requirement of TPS eligibility under the late registration provisions. The Applicant states that in 1998 she joined her spouse in the United States, resided with her sister in Texas while her spouse was working in Florida, but her spouse would visit and send money to her in Texas.

The Applicant cites *Small v. McMaster* 352 S.W. 3d 280,284 (Tex. App. 2011), and *Bolash v. Heid*, 733 S.W. 2d 698, 699 (Tex. App. 1987) in support of her claim that Texas law does not require

(b)(6)

*Matter of V-S-M-A-*

cohabitation to be continuous for a couple to enter into an informal marriage, and that one may have primary residence outside of the country for extended periods of time to satisfy the cohabitation requirements.

In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Texas law provides that an informal marriage may be shown by establishing three factors: (1) an agreement by the parties to be married, (2) living together in Texas after the agreement is made, and (3) representation to others by the parties that they are married. *See Texas Family Code Ann. § 2.401; see also Matter of Garcia*, 16 I&N Dec. 623, 624 (BIA 1978).

In support of her marriage the Applicant has submitted, throughout the application process, the following:

- A Declaration and Registration of Informal Marriage, [REDACTED], Texas, dated [REDACTED] 2015, between the Applicant and [REDACTED]. This document indicates that the couple agreed to be married on or about [REDACTED] 1998, and that they have lived together as husband and wife since that date.
- Copies of their children's [REDACTED] 1985 and [REDACTED] 1990 Honduran birth certificates with English translations, which lists the names of both the Applicant and the TPS registrant.
- Documentation from [REDACTED] (Texas) Independent School District indicating that a daughter was enrolled in school on August 1, 2000. The documentation lists the names of both the Applicant and the TPS registrant.
- Copies of photographs the Applicant claims are of her, her spouse, and their children in Honduras.
- A statement from the TPS registrant asserting that he was married to the Applicant on [REDACTED] 1983 in Honduras, that he and the Applicant have never doubted that their marriage was not legal, that prior to the Applicant coming to the United States he resided in Florida with his sister and was employed at a restaurant, and that after saving enough money he eventually moved to Texas to reside with the Applicant. Regarding his applications listing him as single, the TPS registrant asserts that he has always relied on others to assist with his immigration applications.

If incorrect information has been provided on an application, it is reasonable to expect an explanation from the preparer in order to resolve the discrepancies. No evidence has been submitted on appeal to corroborate the assertions of the TPS registrant. It is further noted that no information relating to a preparer is listed on three of the applications for TPS reregistration. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of

(b)(6)

*Matter of V-S-M-A-*

proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The declaration and registration of informal marriage is considered to be prima facie evidence that a marriage exists. Texas Family Code Section 2.404(d). The submitted declaration and registration of informal marriage contains an oath with the three requisite factors to demonstrate informal marriage, including representing to other that they are married, above the signature of the Applicant and her spouse. The declaration, signed on July 6, 2015, states that the since [REDACTED] 1998, the Applicant and her spouse agreed to be married, lived together as married, and represented themselves as married. However, the record reflects that the Applicant's spouse, subsequent to [REDACTED] 1998, represented himself as single on TPS applications, specifically in May 1999, June 2000, June 2003, and June 2007. As the Applicant's spouse has represented himself as single subsequent to the claimed date of his informal marriage, he did not hold himself out as married and the Applicant cannot demonstrate eligibility to late registration based on marriage to a TPS registrant.

We also note that with respect to the Applicant's reliance on *Bolash v. Heid*, 733 S.W.2d 698 (Tex. App. 1987), the court in that case found that there was evidence sufficient to establish cohabitation where the husband worked in Nigeria but lived with wife each time he returned to Texas. However, the evidence of record indicates that the Applicant's spouse did not reside with her until 2000, outside of the initial registration period. As such, despite the assertions in the declaration and registration of informal marriage, the evidence is insufficient to determine that the Applicant and her spouse lived together as married since [REDACTED] 1998.

The evidence is insufficient to determine that the applicant has established late registration as a spouse of a currently eligible TPS registrant. 8 C.F.R. § 244.2(f)(2)(iv).

The appeal is dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of V-S-M-A-*, ID# 10631 (AAO Oct. 1, 2015)