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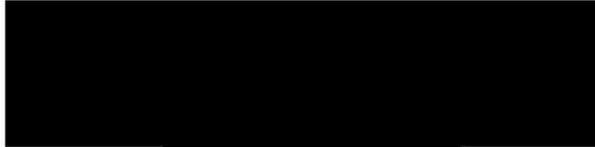
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
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FILE:



Office: VERMONT SERVICE CENTER

Date: NOV 16 2009

[EAC 09 064 50715]

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, 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 she is eligible for TPS under the late initial filing provisions as the spouse of a TPS-eligible alien. The applicant also submits evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States.

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 December 19, 2008. The applicant filed her initial TPS application on July 27, 2002. The director denied that application on October 6, 2004, because the applicant failed to establish continuous residence from February 13, 2001. The AAO affirmed the director's decision and dismissed the appeal on June 26, 2006, and also found that the applicant had not established continuous physical presence in the United States since March 9, 2001.

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 October 6, 2004, the applicant was informed of the reasons why her initial TPS application was denied. The director determined that the applicant failed to provide any new and compelling evidence to overcome the reasons for denying that application. Therefore, the director denied the application.

On appeal, the applicant states that she is eligible for late initial registration because she is the spouse of a TPS-eligible alien. USCIS records confirm that the applicant is married to a TPS-eligible alien. Therefore, the applicant is eligible for late initial registration. Consequently, the director's conclusion that the applicant failed to establish her eligibility for late registration will be withdrawn.

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 TPS application, the applicant submitted:

1. Copies of her birth certificate, with English translation, her marriage certificate, and her passport, issued in New York, New York on March 13, 2003.
2. Copies of an employment authorization card for her husband; statements from [REDACTED] and [REDACTED]
3. Copies of a notice from Internal Revenue Service dated November 28, 2005; her children's birth certificates issued on February 18, 2005 and April 24, 2005; pay stubs dated July 25, 2003 and January 30, 2004; an Incident Report dated August 10, 2002; a Disaster Relief notice from the American Red Cross dated August 9, 2002; hand-written rent receipts dated August 1, 2000, December 19, 2000 and, an illegibly dated receipt;
4. Copies of unsigned 2002, 2006, and 2007 Form 1040 U.S. Individual Income Tax Returns.

The applicant also submitted evidence that is already part of the record.

As stated above, the applicant was informed on October 6, 2004 of the basis for denying her initial TPS application.

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 submits a personal statement and statements from her husband and her [REDACTED]

The passport and birth certificate establish the applicant's identity and nationality. The marriage license and employment authorization card establishes that the applicant is married to a TPS-eligible alien. [REDACTED] states that she rented the applicant an apartment from January 2000 to December 2000. The hand-written rent receipts indicate that the applicant did pay rent during those months. However, [REDACTED] can only attest to the applicant's presence in the United States for dates prior to the requisite dates to establish continuous residence and continuous physical presence. In contrast, [REDACTED] states that the applicant has visited his office since June 22, 2001. [REDACTED] states that the applicant's 2007 tax returns have been completed. [REDACTED] in a July 19, 2006 letter, states that the applicant's child has been registered with Special Child Health Service. The affiants in these statements can only attest to the applicant's presence in the United State since dates subsequent to the requisite dates to establish continuous residence and continuous physical presence. The remaining evidence is also dated subsequent to the requisite dates to establish continuous residence and continuous physical presence. Therefore, 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.