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U.S. Citizenship
and Immigration
Services



M

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: **AUG 02 2004**

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. The director subsequently reopened the matter on a motion to reopen, and affirmed his prior decision. The matter 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 initially denied the application on May 14, 2003, because the applicant failed to establish she was eligible for late registration. The director also found that the applicant had failed to provide sufficient proof of identity and nationality, and evidence to establish her qualifying continuous residence and physical presence in the United States during the requisite periods.

The applicant filed an untimely appeal on June 27, 2003. On appeal, the applicant reiterated her claim of qualifying continuous residence and physical presence in the United States during the requisite periods.

The director reopened the matter on a motion to reopen and affirmed his prior decision on August 20, 2003.

On appeal, the applicant submits a statement and additional evidence.

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 temporary protected status 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 Attorney General may designate;
- (d) is admissible as an immigrant 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, or
 - (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (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.

The phrase 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 phrase 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period. The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed her application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on November 12, 2002.

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 CIS. 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 proceedings 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, she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and that she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On April 7, 2003, the applicant was requested 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 of identity and nationality and evidence establishing her qualifying continuous residence and physical presence in the United States during the requisite periods. The applicant, in response, provided evidence in an attempt her identity and nationality, and her continuous residence and physical presence in the United States during the requisite periods.

The director determined that the applicant had failed to establish her nationality, her eligibility for late registration, and her continuous residence and physical presence in the United States during the requisite periods, and denied the petition on May 14, 2003. The director subsequently reopened the matter and affirmed his prior decision on August 20, 2003.

On appeal, the applicant reiterates her claim of continuous residence and physical presence in the United States during the requisite periods, and submits additional evidence in an attempt to establish her claim. However, this evidence does not mitigate the applicant's failure to file her Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant has not submitted any 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 had failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, or her physical presence in the United States since March 9, 2001.

The applicant submitted the following evidence with the Form I-821 in an attempt to establish continuous residence and physical presence during the requisite periods:

1. two pay statements from Express Personnel Services for work performed by the applicant for the Graphic Arts Center in Indianapolis, Indiana, one undated, and one relating to a pay check issued to the applicant on February 13, 2000; and,

2. a remittance receipt from an unknown business showing the applicant transferred \$110 to an individual in El Salvador on an unknown date.

As stated above, the applicant was requested on April 7, 2003, to submit evidence establishing her qualifying residence and physical presence in the United States. The applicant, in response, provided a letter dated April 3, 2000, from a representative of [REDACTED] city and state unknown, informing the applicant she had not been selected for a position at that establishment.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS, and denied the application on May 14, 2003.

On appeal, the applicant reasserted her claim and submitted a medical clinic identification card issued to the applicant by [REDACTED] in Los Angeles, California, on February 2, 2001.

On August 20, 2003, the director reopened the matter on a motion to reopen and reaffirmed his prior decision, finding that the applicant had failed establish continuous residence and physical presence in the United States during the requisite periods.

On appeal, the applicant reiterates her claim and submits an affidavit from [REDACTED] who identifies himself as the applicant's brother-in-law. [REDACTED] states that the applicant has lived in his home with him and his wife since January 15, 1997. [REDACTED] further states that the applicant is not able to provide much evidence of her residence and physical presence during the requisite periods because she lived in his home and was not working during the initial registration period for Salvadorans. [REDACTED] provides a photocopy of his employment authorization card and two pay statements relating to his employment for Handleman Company. The affidavit from [REDACTED] in the absence of other, contemporaneous evidence, is not sufficient to establish the applicant's continuous residence and physical presence throughout the requisite periods. [REDACTED] pay statements do not establish the applicant's continuous residence and physical presence because they relate to Mr. [REDACTED] employment, and not to the applicant's employment. The applicant provided only two pay statements and a letter to demonstrate her residence and physical presence in 2000, and a medical clinic identification card dated February 2, 2001. These documents are not sufficient to establish her qualifying continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001. 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 TPS on these grounds will also be affirmed.

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.