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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M1

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: DEC 17 2004

IN RE:

Applicant:

APPLICATION:

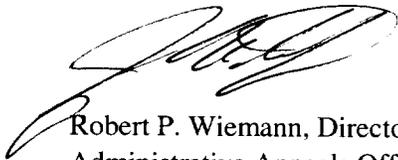
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 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, California 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 denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The director also denied the application because the applicant had not provided sufficient evidence of identity.

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, 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 § 244.3;
- (e) Is not ineligible under § 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 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. 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 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 Citizenship and Immigration

Services (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 has provided sufficient proof of identity.

Pursuant to 8 C.F.R. 244.9(a)(1), each application must be accompanied by evidence of the applicant's identity and nationality. Acceptable evidence in descending order of preference may consist of a passport; a birth certificate accompanied by photo identification; and/or, any national identity document from the alien's country of origin bearing photo and/or fingerprint.

In this case, the applicant has provided a photocopy of the biographic page of her Salvadoran passport, her Salvadoran cedula with photograph, and her California Identification Card issued on June 4, 2002. The applicant has provided sufficient proof of identity and nationality. Therefore, this ground for denial of the application has been overcome.

The second issue in this proceeding is whether the applicant has provided sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant initially provided the following evidence in an attempt to establish her qualifying continuous residence and physical presence in the United States during the requisite time frames:

1. her California identification card issued on June 4, 2002;
2. money transfer receipts dated March 9, 2002; May 10, 2002; June 15, 2002; and July 19, 2003;
3. a receipt dated July 11, 2002, for payment in the amount of \$120.00 for dental treatment by Redwood City, California;
4. a billing statement dated June 12, 2002, from

The director determine that the applicant had not provided sufficient evidence to establish her qualifying continuous residence and physical presence during the requisite time frames and denied the application on February 28, 2004.

On appeal, the applicant states that she applied for TPS on August 1, 2001, and that her application was granted. She further states that she filed an application for an extension of her TPS status on October 10, 2002, and a second application for extension of her TPS status on August 25, 2003. The applicant contends that she was found to be eligible for TPS in 2001, and her current application for extension of her TPS status and her employment authorization should also be approved.

The record reflects that the applicant filed her Form I-821, Application for Temporary Protected Status, on August 1, 2001. Her Form I-765, Application for Employment Authorization, which was filed with the Form I-821, was approved on January 8, 2002, and the applicant was issued an Employment Authorization Card valid from January 8, 2002 to September 9, 2002. A subsequent Form I-765 was approved on January 23, 2003, and she was issued an Employment Authorization Card valid from September 10, 2002 to September 9, 2003.

The approval of the applicant's applications for employment authorization, however, do not constitute approval of her TPS application. Pursuant to 8 C.F.R. § 244.5(b), aliens who applied for TPS during the initial registration period are granted *temporary* treatment benefits, including employment authorization, if the TPS application establishes the alien's prima facie eligibility for TPS. Pursuant to 8 C.F.R. § 244.13(a), *temporary* treatment benefits terminate if an alien is subsequently determined to be ineligible for Temporary Protected Status and the Form I-821 is denied. In this case, the applicant was granted *temporary* treatment benefits, including employment authorization, while her TPS application was pending. When her TPS application was denied, her most recent Form I-765 application was also denied. Therefore, the applicant's assertion that she was granted TPS in 2001 is without merit.

On appeal, the applicant submits the following evidence in an attempt to establish her qualifying continuous residence and physical presence in the United States during the requisite time frames:

5. [REDACTED] money transfer receipts reflecting that the applicant transferred money to El Salvador on the following dates: March 28, 2001; June 6, 2001; November 3, 2001; December 5, 2001; January 5, 2002; December 14, 2002; January 18, 2003; and September 23, 2003;
6. a bill from [REDACTED] dated January 20, 2003;
7. five generic rent receipts in the amount of \$250 each for rent of a room at [REDACTED] California, from January 2001 through March 2001;
8. an employment letter dated March 19, 2004, from [REDACTED] stating, [REDACTED] began working in our home with her sister [REDACTED] in January 2001. We have known her since August of 1995.”;
9. an employment letter dated March 16, 2004, from [REDACTED] stating, “I have known [REDACTED] since 2001. She has worked at my house on a regular basis since then.”;
10. an Alien's Change of Address Card purportedly signed by the applicant on November 15, 2000, reporting a change of address.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that documents such as generic rent receipts “may” be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying residence or

physical presence in the United States. In this case, the applicant has submitted only two employment letters to corroborate her claim of continuous residence and continuous physical presence during the requisite periods. The employment 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)(i). Specifically, the letter is not in affidavit form. Additionally, [REDACTED] does not provide her own address or the address where the applicant resided during the period of her employment, nor does she provide a description of the applicant's duties or the exact period of the applicant's employment. It is noted that [REDACTED] states that she has known the applicant "since August of 1995." It is not clear how [REDACTED] could have known the applicant since 1995 when the applicant does not claim to have entered the United States until November 2000.

The affidavit from [REDACTED] also has little evidentiary weight or probative value. The letter is not in affidavit form. Additionally, [REDACTED] does not provide the address where the applicant resided during the period of her employment, nor does she provide a description of the applicant's duties or the exact dates of the applicant's employment. Therefore, the rent receipts and the employment letters are not sufficient to establish the applicant's continuous residence during the period from February 13, 2001 to June 6, 2001, and her continuous physical presence in the period from March 9, 2001 to June 6, 2001.

The applicant has submitted sufficient evidence to establish her continuous residence and physical presence in the United States since June 6, 2001. However, the applicant has not submitted sufficient evidence to establish her continuous residence in the United States from February 13, 2001 to June 6, 2001, and her continuous physical presence in the United States from March 9, 2001 to June 6, 2001.

It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will 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.