



U.S. Citizenship
and Immigration
Services

10-1

[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date: JUL 21 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:

[Redacted]

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.

for 
Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The application was denied by the Director, Nebraska 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 submit evidence to establish that she was eligible for filing after the initial registration period from March 9, 2001 through September 9, 2002. The director also determined that the applicant had not submitted sufficient evidence to establish that she had entered the United States before February 13, 2001, that she had continuously resided in the United States since February 13, 2001, and that she had been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant reiterates that she is eligible for Temporary Protected Status. The applicant states she has submitted all required documentation and requests that the regulations be reviewed.

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 condition described in paragraph (f)(2) of 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.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, 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. 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 initial registration period for El 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 CIS, on September 11, 2002.

The first issue in this proceeding is whether the applicant has established that she entered the United States prior to February 11, 2001, that she has continuously resided in the United States since February 13, 2001, and been continuously physically present in the United States since March 9, 2001.

On March 24, 2003, the applicant was requested to submit: 1) evidence to establish that she entered the United States prior to February 11, 2001; 2) evidence to establish that she had continuously resided in the United States since February 13, 2001; and, 3) evidence to establish that she has been continuously physically present in the United States since March 9, 2001. The applicant was also requested to submit a current photo

identification document, and evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, the applicant submitted the following documentation:

- 1.) a copy of her Salvadoran personal identification card, [REDACTED]
- 2.) an April 12, 2003 statement from [REDACTED] who stated the applicant rented a room from her during the period from January 2001 until June 2001; and,
- 3.) six receipts, marked "for rent," signed by [REDACTED] issued on January 1, 2001, February 1, 2001, March 1, 2001, April 1, 2001, and June 1, 2001.

The director concluded that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and she had not submitted evidence to establish her eligibility for late registration. On May 21, 2003, the director denied the application. On appeal, the applicant reiterates that she is eligible for TPS. She requests a review of the provisions of 8 C.F.R. § 244.7; §§ 244.9(a)(1), (a)(2), and (a)(3); (b); and (c)(1) to determine her eligibility for TPS. The applicant submits the following documentation:

- 4.) an undated letter from [REDACTED] who states the applicant has resided with her since January 20, 2001, and that is the reason the applicant does not have any receipts, bills, or other documentation as proof of physical presence in the United States.

There are inconsistencies in the evidence discussed in Items Nos. 3 and 4, above. The affiant [REDACTED] fails to provide the address where the applicant resided with her starting in January 2001. Furthermore, the affidavit is not dated; therefore, it does not provide information on how long the applicant has resided with [REDACTED]. The applicant also submitted a statement from [REDACTED] who stated the applicant rented a room from her from January to June 2001 at [REDACTED] when she moved with another friend to [REDACTED]. In addition, the applicant submitted six rent receipts from [REDACTED] for the period from January 1, 2001 though June 1, 2001. Affidavits are not, by themselves, persuasive evidence of residence or presence. The hand-written rent receipts, detailed in No. 3 above, are not supported by any corroborative evidence. Furthermore, the credibility of these documents is suspect since the applicant stated on her TPS application that she did not enter the United States until January 22, 2001, but one of the receipts is dated January 1, 2001. Therefore, these receipts carry little evidentiary weight and will not serve to establish the applicant's eligibility for TPS.

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). The applicant has failed to submit any objective evidence to explain why one of the rent receipts is dated prior to the date she claimed to have entered the United States. Therefore, the reliability of the remaining evidence offered by the applicant is suspect. The applicant claims to have lived in the United States since January 22, 2001. It is reasonable to expect that she would have contemporaneous evidence to support her claim. However, she has not submitted any credible evidence to support her application. The six rent receipts are not sufficient to establish the applicant's qualifying continuous residence in the United States from February 11, 2001, and her physical presence in the United States since March 9, 2001.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous 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 on this ground will be affirmed.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed her application for TPS on September 11, 2002, after the initial registration period had closed. As stated above, on March 24, 2003, the applicant was requested to submit evidence establishing her qualifying residence and physical presence in the United States, and to establish her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided documentation relating to her continuous residence and physical presence in the United States; however, she did not submit any documentation to establish that she was eligible for late registration. The director determined that the applicant had not established that she was eligible for late registration. On May 21, 2003, the director denied the application.

On appeal, the applicant claims that she is eligible for TPS and requests a review of certain provision of 8 C.F.R. § 244, pertaining to Temporary Protected Status for nationals of designated states. The applicant seemingly is claiming that she has complied with the requirements enunciated in 8 C.F.R. § 244.7.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.7(b), provide that:

An application for Temporary Protected Status must be filed during the registration period established by the Attorney General, except in the case of an alien described in § 244.2(f)(2).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid nonimmigrant 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 he or 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). The applicant submits documentation relating to her claim of residence in the United States during the eligibility period. However, this evidence does not mitigate the applicant's failure to file her application for TPS within the initial registration period. The applicant has not furnished any evidence to establish that she met the qualification for late registration, and to overcome the findings of the director pursuant to 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground will also be affirmed.

It is noted that, on appeal, the applicant submits a copy of a summary of the provisions and a notice of a hearing scheduled for December 6, 2002 in Oakland, California, on the proposed settlement in the [REDACTED] class action lawsuit. The proposed settlement provides relief to individuals who applied for suspension of deportation and whose hearings took place within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, encompassing the states of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, and Washington between February 13, 1997 and April 1, 1997. There is no indication in the record, and the applicant has not provided any evidence, that the provisions of the proposed settlement pertain to the applicant. Therefore, the matter need not be discussed further.

The burden of proof is upon the applicant to establish 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.