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individuals



U.S. Citizenship
and Immigration
Services

MJ



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUN 16 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 for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The director's decision is withdrawn and the case will be remanded.

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 responded to a request for evidence to establish her eligibility for TPS, but failed to provide specifically requested evidence. The director, therefore, denied the application.

On appeal, the applicant requests that she be given the opportunity to continue with her application for TPS.

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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 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).

On September 9, 2002, the applicant was provided the opportunity to submit evidence establishing her residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant was also requested to submit evidence of her identity.

In response, the applicant submitted a photocopy of her birth certificate, with English translation and a letter from Amal Faragalla. Mr. Faragalla claimed that the applicant lived at his hotel from January 2001 to January 2002. However, Mr. Faragalla did not provide any rent receipts or other documentation. The applicant claims to have lived in the United States since December 8, 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support this claim; however, no such evidence has been provided.

The director determined that the applicant did not provide proof of her identity, as requested. The director therefore denied the application.

On appeal, the applicant states that she did not have any documents with her in the United States. The applicant also asks that she be allowed to continue with her application for TPS. In addition, the applicant provides additional documentation, specifically, photocopies of her "Cedula," a State of Texas identification card, and various receipts and statements. The applicant also submitted photocopies of documents from CIS pertaining to her TPS and employment authorization applications.

On appeal, the applicant furnished the evidence the director had previously requested, and therefore, has overcome the findings of the director. However, it is noted that the applicant has failed to provide sufficient evidence of her continuous residence and physical presence in the United States as required in 8 C.F.R. §§ 244.2(b) and (c).

Therefore, the case will be remanded and the director shall fully adjudicate the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to El Salvadorans. As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. §1361.

ORDER: The director's decision is withdrawn. The case is remanded for further action.