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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE:



Office: NEBRASKA SERVICE CENTER

Date: SEP 21 2006

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.

Cindy N. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

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 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, the applicant states that she is providing the requested information.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period on May 29, 2001. That application was denied on November 2, 2001, for failure to appear for fingerprinting. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on November 20, 2002. The director denied this application because it was filed outside of the re-registration period. The applicant filed another Form I-821, Application for Temporary Protected Status on May 7, 2003. The director denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. In addition, the director determined that the applicant failed to establish that she had entered the United States and maintained continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing of the TPS application. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on May 29, 2001. That initial application was denied by the director on November 2, 2001. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed subsequent Forms I-821 on November 20, 2002 and May 7, 2003. Since the initial application was denied on November 2, 2001, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 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 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 May 7, 2003.

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 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. *See* 8 C.F.R. § 244.2(g).

On June 30, 2003, the applicant was provided the opportunity 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 establishing her nationality and identity, her date of entry and continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001. The applicant, in response, provided proof of her nationality and her identity and provided evidence in an attempt to establish her continuous residence and her continuous physical presence in the United States. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that she is providing evidence that establishes her date of entry, residence and continuous physical presence in the United States in May 2000. However, this does not mitigate the applicant's failure to file her TPS application 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 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, and her continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on June 30, 2003, to submit evidence establishing her qualifying residence and physical presence in the United States. In response, the applicant submitted the following documentation:

1. Copies of the applicant's El Salvadoran passport and national identity card.
2. Copies of money order transfer receipts dated March 2, 1999, August 11, 1999, December 28, 1999, and August 7, 1999.
3. A copy of an insurance bill dated December 17, 2000, and a receipt for payment of car insurance dated November 12, 2001, and a policy statement from Indiana Farmers Mutual Insurance Company dated July 29, 2002.
4. A copy of a bank statement dated July 3, 2002, and a deposit slip dated September 15, 2003.
5. A Copy of Receipt Notices from CIS dated November 26, 2002 and August 15, 2003.
6. A copy of a Vehicle Purchase Agreement/Bill of Sale dated March 13, 2003, and a copy of a Certificate of Title dated April 7, 2003.

The applicant has provided evidence that she was present in the United States prior to February 13, 2001, but has not provided evidence to show that she has maintained continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the 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. Specifically, the director found gaps in the applicant's continuous residence and physical presence from August 11, 1999 to August 19, 2000, August 20, 2000 to July 15, 2001, October 29, 2001 to July 3, 2002, November 20, 2002 to March 13, 2003, and from March 14, 2003 to August 14, 2003. On appeal, the applicant furnished:

1. A copy of a letter from the applicant to CIS dated March 18, 2003.
2. Copies of Receipt Notices dated May 13, 2003 and August 15, 2003.
3. Copies of money transfer receipts dated December 11, 2002, May 16, 2001, October 20, 2000, October 20, 1998 and undated copies of a money transfer receipt, a receipt from Dale State Agency, Inc., dated December 28, 1999, and an undated receipt from Dale State Agency, Inc.
4. Copies of an invoice from Indiana Farmers Mutual Insurance Company dated June 13, 2002, an automobile policy change declaration with an effective date of July 29, 2002, a Statement of Account dated December 10, 2001, and an undated Statement of Account.
5. Copies of a receipt from Freedom Bank dated November 15, 2002, and a deposit ticket dated December 19, 2001.

6. Copies of the applicant's Employment Authorization Card issued on August 10, 2001, and her State of Indiana Identification Card issued on October 29, 2001.
7. Copies of Resident Fishing Licenses dated July 15, 2001 and November 26, 1999 from the State of Indiana.

The applicant has furnished evidence that indicates her presence in the United States prior to and after the qualifying dates to establish continuous residence and continuous physical presence, but she has not presented sufficient evidence regarding her **continuous** residence from February 13, 2001, and her **continuous** physical presence from March 9, 2001, to the filing date of the application.

The applicant has failed to establish her qualifying continuous residence or physical presence in the United States during the period from February 13, 2001 and March 9, 2001 respectively. 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.

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.