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FILE: [REDACTED]
[LIN 04 129 51728]

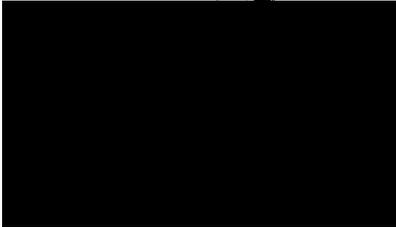
Office: Nebraska Service Center

Date: DEC 08 2005

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:



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, 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 her date of entry into the United States prior to February 13, 2001, her "residence in the United States since February 13, 2001, and her continuous physical presence since March 9, 2001.

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 filed her initial application [LIN 01 193 51048] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 1, 2001. That application was denied on September 21, 2001, because the applicant failed to establish her continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant filed an appeal to the director's decision to deny which was dismissed by the AAO on July 24, 2002.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, [LIN 02 201 51349] on May 23, 2002, during the initial registration period. The director denied this second application on January 23, 2003, due to abandonment. The applicant did not file an appeal during the prescribe time period.

The applicant filed a third Form I-821, Application for Temporary Protected Status, on March 31, 2004. The director denied this third application [LIN 04 129 51728] on June 23, 2004, 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. The director also found that the applicant had failed to establish her date of entry into the United States prior to February 13, 2001; her continuous residence in the United States since February 13, 2001; and, her continuous physical presence in the United States since March 9, 2001.

Any Form I-821 application subsequently submitted by the same applicant after an 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 the instant Form I-821 on March 31, 2004. Since the first and second applications were denied on September 21, 2001 and January 23, 2003, respectively, the instant 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 is eligible for TPS 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.

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 September 9, 2006, 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 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 April 26, 2004, 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 a copy of her birth certificate or passport, and a copy of her current photo identification. In addition, the applicant was requested to submit evidence to establish her "entry to the United States prior to February 13, 2001"; her "residence in the United States since February 13, 2001"; and her "physical presence in the United States since March 9, 2001." In response, counsel, on behalf of the applicant, submitted the following documentation:

- 1) A copy of the applicant's Minnesota Driver's License receipt dated August 13, 1998;
- 2) A copy of the applicant's passenger receipt issued by Continental Airlines issued on July 21, 1998, for a round-trip ticket from San Salvador to Minneapolis, Minnesota and return;
- 3) A copy of the applicant's baggage receipt and boarding pass issued by Continental airlines dated August 2, 1998;
- 4) Copies of Western Union money transfer receipts dated October 22, 1998, November 11, 1998, and September 6, 1999;
- 5) Copies of the applicant's Minnesota Identification Cards bearing expiration dates of September 14, 2002 and September 14, 2006;
- 6) Copies of receipt notices from the Service dated June 7, 2001 and November 19, 2002;
- 7) A copy of the applicant's DBI Tenprinter Applicant Information Worksheet dated July 5, 2001;
- 8) A copy of the director's July 16, 2001, request for evidence regarding her initial TPS application;
- 9) Copies of the director's decision to deny the applicant's initial TPS application dated September 21, 2001;

- 10) Copies of the Employment Authorization Cards for her husband, Mr. [REDACTED] Blanco, bearing an eligibility category of "A12";
- 11) Copies of the applicant's marriage certificate from El Salvador along with an English translation; and,
- 12) A copy of a FedEx US Airbill dated May 24, 2004, from counsel to the USCIS.

On June 23, 2004, the director denied the application because the applicant had failed to establish her date of entry into the United States prior to February 13, 2001; her continuous residence in the United States since February 13, 2001; and her continuous physical presence in the United States since March 9, 2001.

On appeal, counsel provides, in addition to copies of the same evidence submitted in response to the director's October 31, 2002, request as noted above, the following documentation:

- 13) Copies of money transfer receipts in Spanish from Super Envios dated August 15, 2002, September 6, 2002, October 20, 2002, and November 15, 2002;
- 14) Copies of the applicant's earnings statements from McDonald's of Gold Concourse reflecting pay periods from September 29, 2002 to October 12, 2002, October 27, 2002 to November 9, 2002, and November 24, 2002 to January 4, 2003;
- 15) A copy of a customer receipt dated April 16, 2001, from Money Exchange bearing the name of Mr. [REDACTED];
- 16) A copy of a "Carte De Poder" written in Spanish dated May 22, 2001, signed by the applicant and her husband, Mr. [REDACTED] and,
- 17) Copies of Western Union Money Orders dated November 4, 2002 and September 2, 2003.

Counsel, on appeal, also states that the applicant purchased a round-trip ticket, as detailed in No. 2 above, because it was cheaper than a one-way ticket from El Salvador. In addition, counsel states that the applicant remained in the United States beyond the scheduled date of return to El Salvador as reflected by the Western Union receipt dated September 6, 1999.

A review of the evidence contained in the record reflects a significant gap of over 20 months from September 6, 1999, the date found on the Western Union money transfer receipt as detailed in No. 4 above, and May 22, 2001, the date found on the "Carte De Poder", as detailed in No. 16 above. The remaining evidence post-dates the beginning of the qualifying time periods for El Salvadoran TPS by over 2 months. It is also noted that the customer receipt, as detailed in No. 15 above, reflects the name of the applicant's husband, Mr. [REDACTED]

It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous residence and continuous 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.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for TPS 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.