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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: VERMONT SERVICE CENTER

Date: **JAN 21 2005**

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 she was eligible for late registration. The director also found that the applicant had failed to establish 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, 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. 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 record reveals that the applicant filed her application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on October 1, 2002.

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).

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

The record of proceedings 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, she was either in a valid immigration 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 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).

On March 25, 2003, 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 evidence establishing her qualifying continuous residence and physical presence in the United States. The applicant, in response, provided documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on June 30, 2003.

On appeal, the applicant explains that she filed her Form I-821, Application for Temporary Protected Status, after the expiration of the initial expiration period because she had difficulty getting a copy of her birth certificate from El Salvador, and she could not submit the application without her birth certificate.

The applicant's explanation is acknowledged; however, this explanation does not mitigate the applicant's failure to file her Form I-821, Application for Temporary Protected Status, 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 had 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, or her 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. an affidavit dated September 25, 2002, from [REDACTED] who identifies himself as the applicant's brother, stating that the applicant arrived in the United States via Los Angeles, California, on or about January 23, 2001, and that he has taken care of her since that time;
2. an affidavit dated September 25, 2002, from [REDACTED] stating that the applicant has lived at [REDACTED] since her arrival in the United States on January 23, 2001, and that she shares the apartment with the applicant and her brother;

3. an affidavit from [REDACTED] attesting that the applicant arrived in the United States in January 2001 and has lived in Maryland with her brother since that time;

As stated above, the applicant was requested on March 25, 2003, to submit evidence establishing her qualifying continuous residence and physical presence in the United States. The applicant, in response, provided the following documentation:

4. seven generic, unsigned rent receipts indicating that the applicant paid \$200 for rent at an unspecified address on February 1, 2001; March 2, 2001; April 1, 2001; May 2, 2001; June 2, 2001; August 1, 2001; and September 5, 2001;
5. a letter dated April 21, 2003, from [REDACTED] stating she has been the applicant's landlord at [REDACTED] since January of 2001, and that the applicant pays \$200 per month rent; and,
6. another affidavit from [REDACTED] stating that the applicant arrived in the United States on or about January 23, 2001;

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application.

On appeal, the applicant states that it is nearly impossible for her to provide documents to establish her qualifying continuous residence and physical presence in the United States during the requisite time frames because she was an undocumented immigrant during that time and could not legally open a bank account, work, rent an apartment, or get a social security card. She provides the following evidence:

7. an affidavit dated July 11, 2003, from [REDACTED] stating that the applicant has been cleaning his apartment on a weekly schedule since January of 2001; and,
8. an affidavit from [REDACTED] stating that the applicant has been cleaning his home since the first week of February of 2001.

The copies of generic rent receipts provided by the applicant are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as 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 continuous residence or physical presence in the United States. The applicant claims to have lived in the United States since January 23, 2001. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these rent receipts; however, no such evidence has been provided.

The employment affidavits from Mr. [REDACTED] and Mr. [REDACTED] and the affidavit of witness from Ms. [REDACTED] have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiants do not provide the applicant's addresses since January 23, 2001.

The applicant has not submitted sufficient credible evidence to establish her continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001. 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 TPS 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.