



U.S. Citizenship
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FILE:

[REDACTED]
[LIN 03 265 51516]

Office: NEBRASKA SERVICE CENTER

Date:

JUN 24 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 cursive script, appearing to read "Robert P. Wiemann".

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 for TPS because the applicant failed to establish she was eligible for late registration. The director also determined that she had submitted insufficient evidence showing that she has continuously resided in the United States since March 9, 2001.

On appeal, the applicant states that she originally applied during the first registration period in 2001 and was approved. She further states that the following year, her EAD was revoked and indicates that there seemed to be a problem with her address that she resolved. She indicates that she has submitted all evidence requested of her and that she has not left the country since her arrival. She submits a letter from her employer and indicates that it establishes that she has been employed by that company since December 2000 until "the present."

As stated in the regulations at 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 reflects that the applicant filed a Form I-821, Application for Temporary Protected Status during the initial registration period. That application was denied on July 27, 2002 because the applicant had failed to provide clear and conclusive evidence of her date of entry, meeting the requirements for residence and maintaining a physical presence in the United States as defined by the Attorney General. The applicant did not file either a motion or an appeal during the requisite timeframe. 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 this subsequent Form I-821 on September 2, 2003. Since the initial application was denied and this subsequent application was filed after the latest initial registration period ended on September 9, 2002, it must be considered as a late registration.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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 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 since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 November 24, 2003, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in the regulations at 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit identity documentation and evidence establishing her qualifying residence and physical presence in the United States. The applicant, in response, provided identity documentation and evidence relating to her continuous residence and continuous physical presence in this country.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on February 3, 2004. On appeal, the applicant incorrectly states that the Form I-821 that she filed during the first registration period in 2001 and was approved. As stated above, that application was denied on July 27, 2002.

The applicant has submitted evidence in an attempt to establish her qualifying continuous residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file an approvable Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that she has met the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

The second issue raised by the director in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001. It is noted that the director incorrectly used March 9, 2001 as the beginning date for a showing of continuous residence. The date used by the director relates to the beginning of the continuous physical presence period for Salvadorians.

As stated above, the applicant was requested on November 4, 2003, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. A copy of a United States nonimmigrant B1/B2 visa that was issued to her in San Salvador on September 11, 1998. She also submitted a copy of her Form I-94, Record of Arrival/Departure, showing that she was admitted to this country on September 28, 1998.
2. A copy of her birth certificate along with an unsigned English translation.

3. A copy of a "MoneyGram International Money Transfer" showing that the applicant sent funds to [REDACTED] abroad and that she received the money on February 27, 2001. The transfer lists the sender's residence as [REDACTED] Aurora, Colorado.
4. A copy of invoice [REDACTED] from [REDACTED] Furniture Outlet in Denver, Colorado showing that the applicant signed for two pieces of furniture on July 16, 2001.
5. A copy of a debt collection letter to the applicant dated December 27, 1999 from Credit Systems International, Inc. addressed to her in Dallas, Texas.
6. The applicant's account summary dated January 14, 1999 from Dallas Southwest Medical Center.
7. Copies of a Texas Department of Public Safety identification card that was issued to the applicant on December 8, 1998.

On appeal, the applicant submits a letter of employment dated February 23, 2004 from [REDACTED], the owner of [REDACTED] in Denver, Colorado. The owner states that the applicant has been her employee since late December 2000 until July 2001 and continued from September 2001 until "the present."

Based upon the totality of the evidence submitted, the applicant has overcome the objection raised by director concerning the issue of her continuous residence in the United States since February 13, 2001 until the filing date of this application.

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.