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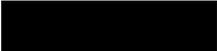
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

JUN 24 2005

[LIN 03 257 50430]

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.

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 she was eligible for late registration. The director also found that the applicant had failed to establish continuous residence in the United States since February 13, 2001, and 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 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. Subsequent extensions of the TPS designation have been granted, with the latest validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on August 27, 2003.¹

¹ It is noted that the applicant filed a Form I-821, Application for Temporary Protected Status on August 27, 2001 under CIS receipt number LIN 01 254 53113. That application was denied by the Director, Nebraska Service Center, on December 27, 2001, because the applicant failed to submit sufficient evidence to establish her identity and nationality. The applicant did not file an appeal from the denial of that application. As stated by the director, since the prior TPS application was denied, the current application cannot be considered as an application for re-registration; it can only be considered as an application for late initial registration.

The burden of proof is upon the applicant to establish that 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant has established that she is eligible for late initial 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).

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on December 2, 2003.

On appeal, the applicant states that she filed her first application on August 27, 2001, and that application was approved. The applicant asserts that she submitted a second TPS application on or around September 6, 2002, during the initial registration period. She states that the application was rejected and returned to her for a signature. She indicates that she returned the package, and it was received at the Nebraska Service Center on October 2, 2002. The applicant submits: photocopies of Form I-797C notices acknowledging receipt of a Form I-821 and a Form I-765, Application for Employment Authorization, at the Nebraska Service Center on August 27, 2001; a photocopy of a United States Postal Service (USPS) domestic return receipt indicating receipt of material at the Nebraska Service Center on October 4, 2001; and, a photocopy of a domestic return receipt reflecting receipt of mail at the Nebraska Service Center on August 27, 2001.

These documents all relate to the applicant's prior application for TPS. It is noted that the applicant incorrectly states on appeal that her 2001 TPS application was approved. As previously stated, that application was denied by the Director, Nebraska Service Center, on December 27, 2001.

The applicant has not provided any evidence to establish that she filed a second TPS application with the Nebraska Service Center on or around September 6, 2002. The applicant has not provided 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)(iv). Consequently, the director's determination that the applicant failed to establish her eligibility for late initial registration will be affirmed.

The second issue in this proceeding is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant filed the following evidence with the Form I-821:

1. a photocopy of an Activity Status Report from Concentra Medical Centers in Aurora, Colorado, relating to a medical appointment on March 29, 2001, for a job-related back injury suffered by the applicant on January 27, 2001; and,
2. a photocopy of a letter to the applicant from the Department of Human Services, County and City of Denver, Denver, Colorado, dated June 8, 2001.

On September 30, 2003, the applicant was requested to provide evidence to establish her eligibility for late initial registration and additional evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In response, the applicant provided the following:

3. photocopies of Activity Status Reports from Concentra Medical Centers in Aurora, Colorado, relating to medical appointments on May 18, 2001 and July 16, 2001;
4. photocopies of pay statements from CoreStaff Services headquartered in Houston, Texas, dated: January 5, 2001; January 12, 2001; January 19, 2001; January 26, 2001; February 2, 2001; and February 16, 2001;
5. instructions relating to a medical prescription filled by the applicant at Concentra Medical Centers in Aurora, Colorado, on February 15, 2001;
6. a photocopy of an appointment notice for an X-ray on January 17, 2001, at the Denver-Metro TB Clinic in Denver, Colorado;

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on December 2, 2003.

On appeal, the applicant provides a photocopy of her Colorado Identification Card issued on January 14, 2002. The applicant has provided sufficient evidence to establish residence and physical presence from January 2001 through July 16, 2001. However, she has provided only her Colorado Identification Card to establish continuous residence and continuous physical presence in the United States from July 26, 2001 to August 27, 2003, the filing date of the current TPS application.

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