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



U.S. Citizenship
and Immigration
Services

M1



FILE:



Office: VERMONT SERVICE CENTER

Date: 4/12/04

[EAC 03 077 53170]

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.


for 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 (AAO) on appeal. The appeal will be dismissed.

The applicant is stated to be a Honduran national and a "registered" 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, that she had continuously resided in the United States since February 13, 2001, and that she had been continuously physically present in the United States since March 9, 2001. The director also found that the applicant failed to establish her nationality.

On appeal, the applicant provides a brief statement and additional documentation.

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 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.

The first issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

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 September 9, 2006, upon the applicant's re-registration during the requisite time period.

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 initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record reflects that the applicant filed her application on November 13, 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 record of proceeding confirms that the applicant filed her application for TPS on November 13, 2002, 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).

In a notice of intent to deny, dated October 21, 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 to establish her continuous residence and her continuous physical presence in the United States during the required timeframes. In addition, the applicant was requested to submit evidence to demonstrate that

she is a national or citizen of El Salvador. In response, the applicant submitted four letters from persons, who claim to have known her since November or December of 2000, and a W-2, Wage and Tax Statement, for 2001, showing earnings of \$421.20.

The director determined that the documentation provided by the applicant did not "provide support for residence or physical presence," that the applicant did not address the issue of Nationality, and "you have not established that any of the four conditions necessary for Late Initial Filing apply to you." The director denied the application on July 28, 2003.

On appeal, the applicant states that she applied for "Employment Authorization into the program of Temporary Protection [sic] Status for Salvadoran on time, however, I did not receive an answer." The applicant also states that she applied for her "first employment authorization on July 21, 2002 [sic] and I applied for the first Time [sic] during the period, however, I did not receive my employment authorization." It is noted that the record contains a Form I-765, Application for Employment Authorization, signed and dated by the applicant on July 21, 2002. However, the application was not received by the Service

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 decision to deny the application for temporary protected status will be affirmed.

The second issue raised by the director to be addressed in this proceeding is whether the applicant has established her nationality.

An applicant is eligible for temporary protected status only if such alien establishes that he or she is a national of a foreign state designated under section 244(b) of the Act. 8 C.F.R. § 244.2(a).

The applicant claims on the application that she is a citizen of El Salvador. The record contains a photocopy of the applicant's birth certificate along with its English translation, which states that the applicant was born in Catacamas Olancho, Honduras, and that the birth certificate was issued on June 11, 2002, in El Salvador. On appeal, the applicant states that she was "born in Honduras, however my parents are Salvadoran and they return [sic] with me to El Salvador and I am registered as Salvadoran for the country of my parents." The applicant provides a photocopy of Cedula Number [REDACTED]. The Cedula is written in a foreign language and does not contain an English translation. 8 C.F.R. § 204.1(f)(3) states that foreign language documents must be accompanied by an English translation which has been certified by a competent translator. The applicant also submitted a photocopy of the biographical page of what appears to be her passport. However, a large portion of the passport is illegible and cannot be considered.

The documentation presented by the applicant is not sufficient in establishing that the applicant is an El Salvadorian citizen. The applicant merely states that she is registered as an El Salvadorian because of her parents, but the documentation submitted does not clearly establish the applicant's citizenship. Consequently it cannot be determined if the applicant is an El Salvadorian citizen as claimed on her TPS application. Therefore, the director's decision to deny the application for temporary protected status for this reason will be affirmed.

The remaining issues raised by the director to be addressed in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001.

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.

On appeal, the applicant states that she entered the United States in November 2000. The applicant submits: a statement dated May 21, 2003, from [REDACTED] who states that he has known the applicant for almost three years when she came from El Salvador in November of 2000; a statement dated May 23, 2003, from [REDACTED] who states that he has personally known the applicant for two years and that she has established her residence in the United States since she entered in November 2000; a previously submitted copy of a W-2, Wage and Tax Statement for the year 2001, showing earnings as \$421.20; a letter dated August 11, 2003, from [REDACTED] who states that the applicant rented a room from him from December 2000 until December 2001; a letter from Pastor [REDACTED] who states that he has known the applicant since December 2000, and that she has been a member of [REDACTED] EF. 2:20 church since that time; a letter dated May 21, 2003, from [REDACTED] who states that he has known the applicant for two years; receipts from [REDACTED] dated December 12, 2000 and January 9, 2001; and, a letter dated May 20, 2003, from [REDACTED] who states that he has personally known the applicant for many years and that he can testify that she arrived in the United States in November 2000, as she came to live with him in November of 2000, and that she still lives at his residence.

The record contains no substantial documentary evidence to demonstrate that the applicant has been continuously residing in the United States since February 13, 2001, and that she has been continuously physically present in the United States since March 9, 2001. The above-mentioned letters and statements, without additional supporting documentary evidence, are not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, the letter from [REDACTED] stating that the applicant has resided at his residence since November 2000 until the present contradicts the letter from [REDACTED] who stated that the applicant rented a room from him from "December 2000 until December 2001." It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Id.*, 582, 591.

The applicant has failed to provide sufficient evidence 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 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.