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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **MAR 21 2005**
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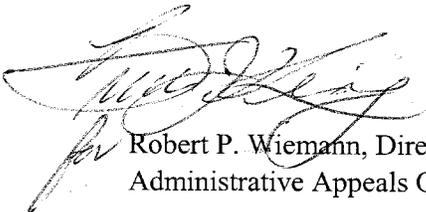
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) 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 Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, the applicant had failed to establish her eligibility for late TPS registration.

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 did file an initial application for TPS during the initial registration period. That application was denied on April 5, 2003, because the applicant failed to establish she had continuously resided in the United States since February 13, 2001, and been continuously physically present in the United States since March 9, 2001. The applicant did not file an appeal during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 4, 2003. The director denied this second application 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 applicant's initial Form I-821 was properly filed on September 9, 2002. That initial application was denied by the director on April 5, 2003. 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 a subsequent Form I-821 on September 4, 2003. Since the initial application was denied on April 5, 2003, the subsequent 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 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, 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 parole; 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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present since March 9, 2001, to the date of filing their application. Subsequent extensions of the TPS designation have been granted, with the latest extension valid 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 September 23, 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 also was requested to submit evidence establishing her date of entry into the United States since February 13, 2001, her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. In response, the applicant provided some evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States; however, she did not submit any evidence to establish her eligibility for late registration. The director determined that the applicant had failed to establish she was eligible for late registration. The director also determined that the applicant failed to establish she had entered the United States prior to February 13, 2001, had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States from March 9, 2001, to the date of filing her application. Therefore, the director denied the application on November 13, 2003.

The first issue in this proceeding is whether the applicant is eligible for late registration. On appeal, the applicant submits additional evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States; however, she did not submit any evidence to establish her eligibility for late registration. A review of the record of proceedings reflects that 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, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. On appeal, the applicant provides the following documentation: a letter dated April 6, 2000, from NCO Financial, Inc., bearing the name of [REDACTED] a copy of her missed appointment notification dated December 21, 1999, from the WIC program; a copy of a letter in Spanish dated January 13, 2000; a copy of a billing statement dated March 12, 2000, from Atlas Editions; a copy of a statement of physician services dated February 10, 2000, bearing the name of [REDACTED] a copy of a Certificate of Death dated September 18, 2000, for Mr. [REDACTED] copies of two letters from Social and Rehab Services dated March 7, 2001, and September 6, 2000, bearing the name of [REDACTED]; a copy of a missed appointment notification dated March 26, 2001, bearing the name of [REDACTED]; a copy of a medical identification card dated March 31, 2001, bearing the name of [REDACTED]; a copy of her letter from the Newman Memorial County Hospital dated November 6, 2001, regarding the birth of her son; a copy of a letter from Preferred Medical Associates Emporium, dated September 27, 2001, bearing the name of [REDACTED]; a copy of a letter dated November 2, 2001, from the Flint Hills Community Health Center, bearing the name of [REDACTED] copies of medical identification cards dated December 31, 2001, February 28, 2002, and March 31, 2002; a copy of a billing statement dated February 11, 2002, from the Preferred Medical Associates; a copy of a billing statement dated February 21, 2002, from the Flint Hill Community Health Center; a copy of her son's newborn identification card; a copy of a receipt in Spanish dated June 26, 2002; copies of two receipts from Ria dated October 26, 2001; copies of a photo identification card in Spanish bearing the name of [REDACTED] copies of the applicant's birth certificate in Spanish along with an English translation, and a copy of a Certificate of Birth for the applicant's son, [REDACTED]

A review of the record of proceedings reflects that the applicant submitted copies of her birth certificate bearing the name of Ms. [REDACTED]. However, the applicant failed to provide any evidence to establish the use of her claimed last name of [REDACTED]. As such, evidence provided by the applicant under the name of Mr. [REDACTED] cannot be considered. Evidence of the use of two names may include official court documents registered with the proper civil authorities certifying the use of Ms. [REDACTED]. Therefore, the applicant has not submitted sufficient evidence to establish her qualifying 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 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 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.