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U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **NOV 23 2005**

[EAC 04 035 50824]

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:



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

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 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 determined that the applicant failed to establish her continuous physical presence in the United States during the requisite timeframe.

On appeal, counsel provides a brief statement. Counsel indicates that he is not submitting any 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 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.

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."

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or 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 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 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 applicant filed her initial TPS application on September 11, 2002. The application was denied on June 11, 2003, because the applicant had not established her eligibility to file for late registration. The applicant was advised that an appeal could be filed within 30 days from the date of the denial notice. The applicant did not file an appeal.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on November 19, 2003.

In a notice of intent to deny, dated March 17, 2004, 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 continuous physical presence in the United States since March 9, 2001. The applicant was informed that if affidavits were submitted, certain criteria would have to be met.

The director determined that the applicant, in her response to the notice of intent to deny, failed to provide any documentation to establish her eligibility for late registration. The director denied the application on July 6, 2004.

On appeal, counsel did not address the issue of late registration and provided no documentary evidence to establish the applicant's eligibility for late registration.

The applicant has not established that she has met any of the other 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 for this reason will be affirmed.

The remaining issue raised by the director to be addressed in this proceeding is whether the applicant 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.

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 previously stated in the above mentioned notice of intent to deny, dated March 17, 2004, the applicant was requested to submit evidence establishing her continuous physical presence in the United States since March 9, 2001.

In response to the notice of intent to deny, the applicant provided the following: a copy of blood results from Pri-Care Medical Office, dated May 30, 2002; a receipt from the New York Language Center, dated August 8, 2001; a contract from the New York Language Center dated August 10, 2001; copies of five undated receipts from "MoneyGram;" copies of two receipts from MoneyGram both dated July 31, 2001; copies of MoneyGram receipts for October 31, 2001, November 20, 2001, April 3, 2002, April 30, 2002, and August 7, 2002; a copy of a receipt from "gigante express," dated April 4, 2002; a copy of a receipt from gigante express, dated May 29, 2002; two copies of receipts from gigante express with no dates; a copy of a postmarked envelope addressed to the applicant, dated August 12, 1999; a copy of an envelope addressed to the applicant with no postmarked date; a copy of the applicant's final Exam from the New York Language Center Broadway, Inc., dated October 19, 2001; a copy of a letter dated April 15, 2003, from [REDACTED] who states that the applicant "is working for us as a HouseKeeping [sic] since August 2001, earning a gross salary of \$350.00 dollars working five (5) days a weeks [sic]"; a copy of a letter from Confe Realty Corp. dated April 15, 2003, which states that the applicant "resides with her brother, [REDACTED] since September 1, 1998 at apartment [REDACTED]"; a copy of a letter dated April 15, 2003, from [REDACTED], who states that the applicant "has been a patient in our office since May of 2000;" a letter from Quest Diagnostic Incorporated, dated May 30, 2000; and, a copy of "IIF Pledge & Receipt" from International Immigrants Foundation, dated August 20, 2002.

The director found that the above documentation did not establish the applicant's continuous physical presence in the United States during the requisite timeframes. The director denied the application on July 6, 2004.

On appeal, counsel states that the documentation submitted is sufficient to establish the applicant's eligibility for TPS, and that the evidence submitted meets the requirements of the regulation.

No additional documentation was presented on appeal to establish the applicant's continuous physical presence in the United States during the requisite timeframe. Counsel's argument that the "doctor's letter" submitted in response to the notice of intent to deny, should be given greater validity as "Medical doctors are held to a higher standard than an ordinary business person," is an assertion unsubstantiated by the record. The letter that was submitted is from the Bronx Family Practice and is not signed by a medical doctor. It is noted that the record contains another letter from the Bronx Park Family Practice, which states that the applicant "has been a patient in this office since 5/30/2000." The letter also states that the applicant's "last visit to our office was on March 19, 2004." The letter was signed by an [REDACTED]. In addition, although counsel states that the documentation is on letterhead, both documents are only created in differing fonts and not letterhead.

Further, counsel relies heavily on the letter from Confe Realty Corp., which states that the applicant has been residing with her brother since September 1, 1998. However, no evidence of a lease has been provided showing that the applicant resides at the address given and when she began residing at said address. Counsel also relies heavily on the letter from [REDACTED] who states that the applicant has been working for him as a housekeeper since August 2001, "earning a gross salary of \$350.00 dollars working five (5) days a weeks [sic]." However, there are no cancelled paychecks, pay records, or any recorded documentary evidence to demonstrate

this. Simply going on record is 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, much of the remaining documentation submitted by the applicant does not begin until July 2001, six months after the onset of the qualifying timeframe. Without additional supporting documentary evidence to cover the periods from February 13, 2001 to July 2001, the Service cannot determine the applicant's continuous physical presence during those timeframes. The applicant has not met the continuous physical presence criteria described in 8 C.F.R. § 244.2 (b). Consequently, the director's decision to deny the application for temporary protected status for this reason will be affirmed.

Beyond the decision of the director, for the reasons stated above, the record contains insufficient evidence to demonstrate that the applicant has been continuously residing in the United States since February 13, 2001, as required under 8 C.R.R. § 244.2 (c). Therefore, the application will also be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.