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U.S. Citizenship  
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FILE:



[EAC 04 002 54846]

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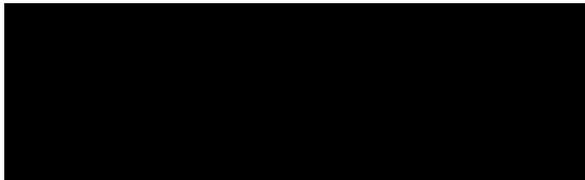
Applicant:



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 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 determined that the applicant failed to establish she: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that she has continuously lived in the United States since October 1996.

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 as 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.

*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.

*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 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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on September 13, 2003.

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 Citizenship and Immigration Services (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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding 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 from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On November 19, 2003 and again on March 1, 2004, the applicant was provided the opportunity 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 residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant was also requested to submit evidence that she is a national of El Salvador. The applicant, in response, provided evidence that she is a national of El Salvador and provided evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the

qualifying period. She did not present sufficient evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that she has lived in the United States since October 1996. According to the applicant, she obtained an employment authorization card through her father's asylum application. The applicant states that she was not aware that she had to apply for TPS within 60 days of the termination of the qualifying condition. The record indicates that the applicant provided evidence that she had a pending Form I-589 Request for Asylum in the United States. While a pending asylum application technically rendered the applicant eligible for late registration, CIS regulations also require a late registration to be filed within a 60-day period immediately following the expiration or termination of conditions that made the applicant eligible for late registration. 8 C.F.R. § 244.2(g). In this case, the applicant's asylum application was terminated on April 26, 2002 based on a request for withdrawal from the principal, the applicant's father. Notification of the termination was mailed to the applicant at her current address on April 27, 2002. The applicant did not file her application during the initial registration period or during the allotted 60-day late registration period described in 8 C.F.R., § 244.2(g). The applicant filed her TPS application on September 13, 2003, more than one year after the end of the registration period and her 60-day period for late registration. 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 failed to establish her eligibility for late registration will be affirmed.

The second and third issues in this proceeding are 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 since March 9, 2001.

As stated above, the applicant was requested on November 19, 2003 and again on March 1, 2004 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 the applicant's El Salvadoran passport.
2. A copy of the applicant's employment authorization card issued on April 19, 2000.
3. Copies of 2001 and 2002 tax documents.
4. A copy of an earnings statements dated August 29, 2003.
5. A copy of the birth certificate of the applicant's daughter who was born on November 24, 1999, her Social Security card and her passport.
6. Copies of Form I-797 Approval Notices for employment authorization dated April 22, 2000 and April 16, 2001.

The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant fails to submit additional evidence.

The passport establishes that the applicant is a native of El Salvador. The birth certificate, employment authorization card and the approval notices indicate the applicant was present in the United States on those dates,

but this evidence does not establish that the applicant had continuously resided in the United States since February 13, 2001 and been continuously physically present in the United States from March 9, 2001 to the filing date of the TPS application. Similarly, the tax documents indicate that the applicant was present in the United States in 2001 and 2002, but do not establish her continuous residence and continuous physical presence in the United States during the qualifying period.

The applicant has not submitted sufficient evidence to establish her continuous residence since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. She 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 temporary protected status on these grounds will also be affirmed.

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.