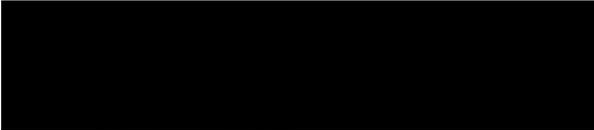


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OCT 04 2005

FILE:



[EAC 03 199 50586]

Office: VERMONT SERVICE CENTER

Date:

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, reopened, and denied again 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 initially denied the application on September 29, 2003, because the applicant failed to establish her eligibility for late registration, her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

On December 6, 2003, more than 33 days after the issuance date of the denial decision, the applicant filed an appeal from the director's decision with the AAO.

On April 26, 2004, the director rejected the appeal because it was untimely filed, but accepted it as a motion to reopen. The director denied the application because the applicant failed to establish her eligibility for late registration and her 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 El 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. 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 granted 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 to September 9, 2002. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on June 10, 2003.

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 is eligible for late 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 fell within at least one of the provisions described in 8 C.F.R. 244.2(f)(2) above.

On July 16, 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 establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on September 29, 2003, and again on April 26, 2004.

On appeal, the applicant submits documentation relating to her physical presence in the United States.

However, this evidence does not mitigate the applicant's failure to file her Form I-821, Application for Temporary Protected Status within the initial registration period.

It is noted that the applicant has previously submitted a New York City marriage certificate indicating that she and [REDACTED] also a citizen of El Salvador, were married in Brooklyn, New York, on April 2, 2003. However, the applicant has not provided any evidence that [REDACTED] has been granted TPS. Furthermore, as stated by the director, since the applicant, **during the initial registration period**, was not the spouse of an alien currently eligible to be a TPS registrant, she cannot qualify for late registration on this basis. The applicant has not submitted any evidence to establish 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 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 continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on July 16, 2003, 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 letter from the applicant dated August 16, 2003, explaining that she worked for Empire Construction in Brooklyn, New York, from September 1, 2000 to May 15, 2001, but that she returned to El Salvador on May 15, 2001, because her child was in critical condition, and returned to the United States on August 15, 2001, at which time she resumed her employment for Empire Construction; and,
2. a letter dated July 27, 2003, from Michael Bonacci, President of Empire Construction in Brooklyn, New York, stating that the applicant worked for his company from September 1, 2000 until May 15, 2001, when she went to El Salvador "to see her sick child," returned to work on August 15, 2001, and was still working for Empire Construction as of the date of his letter.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on September 29, 2003.

The applicant filed an untimely appeal from the denial decision on December 6, 2003. On appeal, the applicant submitted the following:

3. a City of New York marriage certificate indicating that the applicant and [REDACTED] were married in Brooklyn, New York, on April 2, 2003;
4. an Urgente Express money transfer receipt dated November 5, 2000; and,
5. a letter dated November 10, 2003, from [REDACTED] General Manager of Urgente Express in Brooklyn, New York, stating that the applicant has been a customer since February 2000.

The director rejected the applicant's appeal as untimely filed, but accepted it as a motion. The director noted that the applicant was outside the United States from May 15, 2001 to August 15, 2001. The director, therefore, denied the application because the applicant failed to establish continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits the following:

6. an affidavit dated May 23, 2004, from [REDACTED] stating that he has known the applicant since 2000;
7. an affidavit dated December 26, 2003, from [REDACTED] President of Soraya Agency Corp., Brooklyn, New York, stating that the applicant registered with her agency looking for employment in January 2000; and,

8. a photocopy of an Urgente Express money transfer receipt dated [unknown] 16, 2000.

The applicant states that she was outside the United States from May 15, 2001 to August 15, 2001, because her child in El Salvador was critically ill. However, the applicant has not submitted any evidence to corroborate her statements regarding the reason for her absence or the duration of her absence outside the United States.

Additionally, the money transfer receipts (No. 4 and 8 above) predate the requisite period to establish continuous physical presence in the United States. The letter from [redacted] (No. 2 above) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically [redacted] does not provide any information regarding the address where the applicant resided during the period of her employment or the duties of her job. The applicant has provided only a letter from [redacted] (No. 5 above) and affidavits from [redacted] (No. 7 above) and [redacted] (No. 6 above) to establish her physical presence in the United States prior to April 2, 2003, the date of her wedding in Brooklyn, New York. The applicant claims to have lived in the United States since August 1, 2000. It is reasonable to expect that she would have some other type of contemporaneous evidence to support the letter and affidavits; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she was continuously physically present in the United States throughout the requisite period. She has, therefore, failed to satisfy the physical presence requirement described in 8 C.F.R. §§ 244.2(b). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The application will be denied for the reasons stated above, 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.