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U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 06 2005

[EAC 03 259 52378]

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 by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of El Salvador who is applying for 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 after determining that the applicant had failed to establish she is eligible for late registration. The director also determined that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits 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 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.

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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reflects that the applicant filed her initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on September 15, 2003, more than one year after the initial registration period had ended.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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).

In support of her initial Form I-821, the applicant submitted the following documentation:

1. A photocopy of an abstract of her El Salvadoran birth certificate, with English translation, issued in El Salvador on November 13, 2002; and,
2. Documentation to establish that she married [REDACTED] Plainfield, New Jersey, on [REDACTED]

On October 8, 2003, the director requested the applicant to submit evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant was informed that such evidence may include, but was not limited to, employment or school records, rent/mortgage payment receipts, bank or insurance documents, medical or utility bills, or other similar materials. The director also requested the applicant to submit evidence to establish her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, the applicant submitted the following:

3. A letter, dated October 28, 2003, from [REDACTED] manager of Cablevision in Piscataway, New Jersey, stating that the applicant had worked for the company "in the year 11/2000 to 7/2002;"
4. A letter, dated October 24, 2003, from [REDACTED] North Plainfield, New Jersey, stating that the applicant had been employed by her as a babysitter since November 2000;
5. A photocopy of a letter, dated October 3, 2003, from New York County Health Services Review Organization/MedReview, Inc., indicating that the applicant was approved for inpatient care from September 6, 2003, to September 8, 2003; and,
6. A check history report from IND-Brickforce Industrial, for checks dated between October 17, 2002 and October 17, 2003.

The director determined that the documentation submitted was insufficient to establish that the applicant had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. The director also determined that the applicant had failed to establish that she was eligible for late registration. The director denied the application on April 21, 2004.

On appeal, the applicant submits the following additional documentation:

7. An apartment lease agreement for the period beginning on November 1, 2000;
8. A photocopy of an account statement, dated December 2000, from PSE&G, New Brunswick, New Jersey;
9. A photocopy of an account statement from [REDACTED] New York, showing a due date of December 22, 2000;
10. A photocopy of a statement, dated November 5, 2000, from The Edison Radiology Group, Edison, New Jersey;
11. Documentation indicating that she received treatment from the Orthopedic Medicine Center, Plainfield, New Jersey, from December 2000 to June 2001; and,
12. A photocopy of a Western Union Money Transfer receipt, dated September 6, 2000.

The employment letters (Nos. 3 and 4, above) have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, they are not in the form of affidavits and do not provide the address where the applicant resided during the period of her employment, the exact period(s) of employment, and the period(s) of layoff (if any). Furthermore, they are not supported by corroborative documentation such as employee pay records and/or earnings statements.

The remaining documentation submitted by the applicant indicates that she was present in the United States from September 2000 to June 2001; during October 2002; and, from February 3, 2003 to October 3, 2003. There is no

evidence of her continuous residence and continuous physical presence in the United States from June 2001 to October 2002, or from October 2002 to February 2003.

It is noted that there are discrepancies in the documentation provided concerning the applicant's claimed date of entry. On her Form I-821, the applicant indicated that she entered the United States on October 7, 2000; however, No. 12, above is dated September 6, 2000, prior to the applicant's claimed date of entry. These discrepancies in the applicant's submissions have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

It is concluded that the applicant has not submitted sufficient evidence to establish her qualifying **continuous** residence and **continuous** physical presence in the United States during the requisite time periods. She has, therefore, failed to establish that she meets the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for these reasons will be affirmed.

Furthermore, the record confirms that the applicant filed her initial TPS application after the initial registration period had closed. Although the applicant has submitted evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States, this evidence does not mitigate the applicant's failure to file her Form I-821 within the initial registration period. 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 this reason will also be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish her nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1). The application must 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.