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DEC 06 2006

FILE: [REDACTED]
[WAC 05 124 72938]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: DEC 06 2006

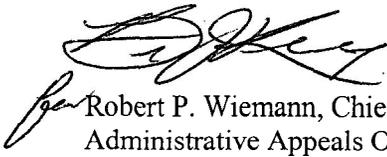
IN RE: Applicant: [REDACTED]

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 denied the application because the applicant had failed to establish that she: (1) was eligible for late registration; (2) had continuously resided in the United States since February 13, 2001; and (3) had been continuously physically present 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 alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

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 valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial application on February 1, 2005.

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).

In a notice of intent to deny the application dated February 28, 2006, the applicant was requested to submit evidence to establish that she was eligible for late initial registration as set forth in 8 C.F.R. § 244.2(f)(2). She was also requested to submit evidence: (1) to establish nationality and identity; and (2) that she had continuously resided in the United States since February 13, 2001, had been continuously physically present from March 9, 2001, to the date of filing the application.

The director noted that the applicant, in response, failed to include any evidence to show that she met the requirements for late registration, and denied the application on May 25, 2006.

On appeal, the applicant asserts that she sent the wrong evidence because she was assisted by a Notary Public who did not give professional attention to the evidence requested by the director; however, she is now sending the correct evidence to establish residence and physical presence in the United States.

The applicant, however, neither addressed nor 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 TPS application on this ground will be affirmed.

The second issue in this proceeding is whether the applicant has established her nationality and identity.

In a notice of intent to deny dated February 28, 2006, the applicant was requested to provide documentation to establish her nationality and identity. In response, the applicant submitted a copy of an El Salvadoran passport issued to the applicant at Los Angeles, California, on January 24, 2006. Additionally, the record of proceeding contains the applicant's El Salvadoran birth certificate with English translation.

The applicant has, therefore, overcome this ground for denial.

The third issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

As stated above, the applicant was requested on February 28, 2006, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted:

1. A statement from [REDACTED] indicating that she has personally known the applicant since July 2000 when she came to the United States to live in her home.

The director determined that the applicant failed to submit documentary evidence to support the evidence furnished by the applicant, and denied the application on May 25, 2006.

On appeal, the applicant submits the following:

2. Another statement from [REDACTED] now states that the applicant worked for her as a housekeeper from August 2000 to December 2003.
3. Copies of Forms 1040, U.S. Individual Income Tax Returns, for the tax years 2001, 2002, and 2003.

While [REDACTED] (No. 1 above) indicated that she has "personally known" the applicant since July 2000, she failed to provide any specifics regarding the nature, circumstances, or origin of the affiant's acquaintanceship with the applicant. It is also noted that this statement was undated, and although the statement was stamped by a notary public, it did not indicate that [REDACTED] personally appeared and was sworn to before the notary public. Likewise [REDACTED] second statement (No. 2 above) was also undated and was not notarized. Additionally, the Forms 1040 were not signed or dated by the applicant, nor is there evidence that the forms were filed with the Internal Revenue Service.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided by the applicant to establish her qualifying residence in the United States, were not supported by any other corroborative evidence. The applicant claimed to have lived in the United States since July 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support her claim; however, no such evidence has been provided.

Accordingly, the applicant has failed to establish that she has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the TPS application will also be denied on this ground.

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.