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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: FEB 23 2006

[EAC 04 069 51144]

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 on appeal. The appeal will be dismissed.

The applicant claims to be 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) is a national of El Salvador; (3) had continuously resided in the United States since February 13, 2001; and (4) had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence.

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."

The record reveals that the applicant did file an initial application for TPS during the initial registration period on January 23, 2002 (EAC 02 096 51539). The director denied that application on May 9, 2003, after determining that the applicant had abandoned her application by failing to respond to a request for evidence. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed a subsequent Form I-821 application on January 9, 2004 (EAC 04 069 51144). The director denied this second application because it was filed outside of the initial registration period and the applicant had failed to establish her eligibility for filing under the provisions of late registration. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on January 23, 2002. That initial application was denied by the director on May 9, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application for a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on January 9, 2004. Since the initial application was denied on May 9, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 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 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, 2006, 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 TPS application on January 9, 2004.

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 dated April 20, 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 failed to respond; therefore, the director denied the application on June 25, 2004.

On appeal, the applicant 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 application on this ground will be affirmed.

The second issue in this proceeding is whether the applicant is a citizen or national of El Salvador.

8 C.F.R. § 244.9(a)(1) states, in part:

Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state....Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

In a notice of intent to deny dated April 20, 2004, the applicant was requested to submit evidence to establish that she is a citizen or national of El Salvador. The applicant failed to respond; therefore, the director denied the application on June 25, 2004.

On appeal, the applicant resubmits a copy of an El Salvadoran birth certificate and English translation. The applicant, however, fails to accompany the birth certificate with photo identification, a national identity document, or a passport as required by 8 C.F.R. § 244.9(a)(1).

Consequently, the director's decision to deny the application on this ground will also be affirmed.

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.

In a notice of intent to deny dated April 20, 2004 the applicant was requested to submit additional evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant failed to respond; therefore, the director denied the application on June 25, 2004.

On appeal, the applicant asserts that she has been living in the United States with her mother since September 9, 2000. She submits:

1. A copy of State of Maryland Department of Health and Mental Hygiene birth registration notice indicating that the applicant's daughter [REDACTED] was born on October 26, 2001. And copies of [REDACTED] medical insurance and other medical documents dated November 22, 2001; December 9, 2001; January 1, 2002; and October 23, 2002; and vaccination received from October 28, 2001 through July 26, 2002.
2. Copies of hospital and physician billing statements dated October 27, 2001 and November 22, 2001.
3. A statement dated July 1, 2004, from [REDACTED] St. Michael the Archangel, Silver Spring, Maryland, indicating that he has known the applicant and her mother since December 2000, and that according to their records, they are regular parishioners who have been attending weekly mass since December 2000 to the present.
4. A statement dated December 2, 2003, from [REDACTED] applicant's mother, indicating that the applicant has been residing with her since her arrival in September 2000, that the applicant has not been working because she had to take care of her child, and that she has been supporting the applicant and the applicant's daughter.
5. Copies [REDACTED] Form 1040, Income Tax Return, for the tax years 2000, 2001, and 2002; the Forms 1040 indicate that [REDACTED] claimed the applicant as her dependent for tax year 2000, and claimed the applicant and the applicant's daughter as her dependents for tax years 2001 and 2002.

The statement from Father Cronin (No. 3 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)(v). Specifically the pastor does not explain the origin of the information to which he attests, and how he knows the applicant. Additionally, the pastor failed to show inclusive dates of the applicant's membership at the church, and the address where the applicant resided during the membership period.

While [REDACTED] (No. 4 above) indicated that the applicant has been residing with her since her arrival in September 2000, no documentary evidence was furnish to support her claim. It is noted that she claimed the applicant as her dependent on her Forms 1040 (No. 5 above); however, these forms are not evidence that the applicant was residing in the United States, nor is there evidence that the forms were, in fact, 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 affidavits provided by the applicant are not supported by any other corroborative evidence.

Documentary evidence furnished by the applicant to support her claim of continuous residence and continuous physical presence during the requisite period was dated from October 2001 to October 2002. The applicant claimed to have lived in the United States since September 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.

The applicant has failed to establish that she has met the criteria for continuous residence 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 director's decision to deny the application on this ground 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.