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FILE:



Office: VERMONT SERVICE CENTER

Date: **JAN 06 2006**

[EAC 04 234 53257]

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.

A handwritten signature in black ink, appearing to read "R. 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 denied the application because the applicant failed to establish she was eligible for late registration. The director also found that the applicant had failed to establish continuous residence in the United States since February 13, 2001, and 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.

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 through September 9, 2002. The record reveals that the applicant filed her TPS application with Citizenship and Immigration Services (CIS) on August 12, 2004.

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 TPS 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 September 8, 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 was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, stated that she qualifies for late initial registration because her husband is a lawful

permanent resident of the United States and has filed a Form I-130, Petition for Alien Relative, on her behalf. She submitted evidence relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish that she was eligible for late registration and denied the application on October 20, 2004.

On appeal, the applicant states that her husband, [REDACTED] been a lawful permanent resident of the United States since August 30, 1996. She further states that [REDACTED] in the process of applying for United States citizenship, and intends to file a Form I-130, Petition for Alien Relative. She submits a photocopy of a Form I-551, Alien Registration Card, issued to [REDACTED] under CIS registration number [REDACTED] a copy of [REDACTED] Security Card.

To qualify for late registration, the applicant must provide evidence that she was eligible for late registration during the initial registration period. There is no indication in the record that [REDACTED] filed a Form I-130 on the applicant's behalf, or that such petition was approved during the initial registration period. Further, individuals who are the beneficiaries of approved immigrant visa petitions and are waiting preference allocation for an immigrant visa under section 203 of the Act are not eligible for late registration under 8 C.F.R. § 244.2(f)(2). An immigrant visa petition is not an application for adjustment of status to lawful permanent residence. Therefore, the applicant does not qualify for late initial 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 residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant claimed on her Form I-821, Application for Temporary Protected Status, that she entered the United States without inspection on January 10, 2001.

As stated above, the applicant was requested on September 8, 2004, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In response, the applicant submitted the following:

1. an affidavit dated September 17, 2004, [REDACTED] Pastor of Iglesia Nueva Jerusalem in Lutherville, Maryland, stating that the applicant began attending services at his church on or about January 15, 2001, and has been an active member of his church since that date;
2. a photocopy of a letter dated July 31, 2003, from Southeast Early Start, Kennedy Krieger Institute, in Baltimore, Maryland;
3. a photocopy of a State of Maryland birth certificate indicating that [REDACTED] to the applicant [REDACTED] on October 19, 2003;

4. a photocopy of a notice dated November 5, 2003, from Baltimore Health Care Access, Inc., Baltimore, Maryland, regarding the applicant's application for the Maryland Children's Health Program;
5. a photocopy of a lease agreement for a rental property located [REDACTED] for the period from August 1, 2000 to July 31, 2002; and,
6. photocopies of three mailing envelopes postmarked November 13, 2003, April 21, 2004, and May 23, 2004, respectively.

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

On appeal, the applicant repeats her claim to have lived in the United States since 1996, but she does not submit any additional evidence to establish her qualifying continuous residence and continuous physical presence in the United States.

The affidavit from [REDACTED] 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 provide the address where the applicant resided during the period of her involvement with the church. The lease agreement (No. 5 above) is not sufficient to establish the applicant's residence and physical presence in the United States in 2001 and 2002 because the applicant has not provided any evidence to establish that she and her husband lived at that address throughout the rental period.

The applicant has not provided sufficient evidence to establish her continuous residence in the United States from February 13, 2001 to July 31, 2003 (No. 2 above), or her continuous physical presence in the United States from March 9, 2001 to July 31, 2003.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods. 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 TPS on these grounds will 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.