



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **JAN 26 2006**

[EAC 04 255 50009]

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 failed to establish that: (1) she was a citizen or national of El Salvador; (2) she was eligible for late registration; (3) she had maintained continuous residence in the United States since February 13, 2001; and (4) that she had maintained continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant asserts that she is an El Salvadoran and, therefore, is eligible for TPS.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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. A subsequent extension of the TPS designation has been granted with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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).

The first issue in this proceeding is whether the applicant has submitted sufficient evidence to establish that she is a citizen or national of El Salvador.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate that he or she is a citizen or national of a state designated under section 244(b) of the Act.

The regulations at 8 C.F.R. § 244.9 state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* 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. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (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.

On October 1, 2004, the applicant was requested to submit evidence to show that she is a citizen or national of El Salvador. The applicant submitted evidence in an attempt to establish continuous residence and continuous physical presence.

The director determined that the applicant had failed to establish that she was a citizen or national of El Salvador and denied the application on January 12, 2005.

On appeal, the applicant reasserts her claim of eligibility for TPS.

The applicant has provided insufficient evidence to establish that she is a citizen or national of El Salvador. The applicant submitted with her initial TPS application a copy of an El Salvadoran birth certificate along with an English translation. However, a birth certificate alone does not establish citizenship or nationality. There has been no photo identification or national identity documentation submitted to establish citizenship or nationality. 8 C.F.R. § 244.2(a)(1). Consequently, the director's conclusion that the applicant had failed to establish that she was a citizen or national of El Salvador will be affirmed.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS), on September 10, 2004.

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 was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and that she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

As stated above, on October 1, 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 submitted documentation in an attempt to establish continuous residence and continuous physical presence.

The director determined that the applicant had failed to establish that she was eligible for late registration and denied the application on January 12, 2005.

On appeal, the applicant reasserts her claim of eligibility for TPS.

The applicant submitted evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Application for Temporary Protected Status 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 conclusion that the applicant had failed to establish her eligibility for late registration will 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 her continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on October 1, 2004 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant submitted the following documentation:

1. An affidavit from the pastor of [REDACTED] Church in which he stated that he has known the applicant since February 1, 2001 when she, her family members and friends began attending Sunday services, and that the applicant is currently a member of the church in good standing;
2. An affidavit from [REDACTED] in which he stated that the applicant is his sister-in-law and that she came to live with him since late January of 2001, and that she has been babysitting

- his three children and has been working as a housekeeper for relatives, mutual friends, and fellow country persons while awaiting the outcome of her immigration applications; and,
3. Copies of two envelopes addressed to the applicant with illegible post-marks.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on January 12, 2005.

On appeal, the applicant reasserts her claim of eligibility for TPS and resubmits the evidence listed above.

The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. The affidavit from the church pastor (No. 1 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, nor does he provide the address where the applicant resided during the period of her involvement with the church. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these statements; 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).

There has been no corroborative evidence submitted to support the statements made by [REDACTED] (No. 2 above) regarding the applicant's claimed presence in the United States since January of 2001. Without corroborative evidence, affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(a)(2)(i) and (v).

The copies of the envelopes addressed to the applicant (No. 3 above) do not contain legible post-mark dates. The date stamp located in the lower left hand corner of each envelope is not an official post-mark date and therefore, will not be used to establish the applicant's eligibility for TPS.

The applicant has failed to establish that she has met the continuous residence and continuous physical presence 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 also be affirmed.

An alien applying for TPS 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.