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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



Office: NEBRASKA SERVICE CENTER

Date: MAY 22 2006

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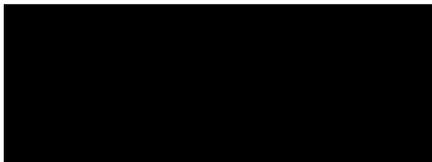
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 determined that the applicant failed to establish she: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, counsel for the applicant stated that the application was erroneously classified as an initial application. The applicant also resubmits evidence previously provided in an attempt to establish continuous residence and continuous physical presence during the qualifying period.

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 July 6, 2001. That application was denied on December 20, 2001, for failure to respond to a request for evidence to establish her eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 24, 2002. The director denied this application because it was filed outside of the initial registration period and because 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 he 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 July 6, 2001. That initial application was denied by the director on December 20, 2001. 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 as 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 September 24, 2002. Since the initial application was denied on December 20, 2001, 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 applicant who is a national of a foreign state as 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.

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.

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 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 granted until September 9, 2006, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on September 24, 2002.

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). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On March 24, 2003, the applicant was provided the opportunity 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 date of entry and continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant was also requested to submit a copy of her birth certificate or passport. The applicant, in response, provided a copy of her passport and evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the applicant entered the United States on November 24, 1995 and has been physically present in this country since that date. According to counsel, the applicant timely registered for TPS during the initial registration period and the Service erroneously classified the applicant's re-registration application as an initial application. Counsel states that the appeal must be sustained. The applicant also resubmits evidence in an attempt to establish her continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file her TPS application 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 failed to establish her eligibility for late registration will be affirmed.

The second and third issues in this proceeding are 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 March 24, 2003 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In his decision, the director listed the evidence furnished by the applicant in response to her request for additional evidence.

The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant resubmits evidence previously provided in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. The applicant also submits the following documentation:

1. Copies of Form I-797C Receipt Notices dated July 10, 2001 and November 7, 2002.
2. Copies of notices from Risk Management Alternatives, Inc. dated February 7, 2001 and March 14, 2001.
3. A copy of a date-stamped envelope from Gigante Express dated April 1, 1998.
4. A copy of a Social Security application dated August 27, 1998.
5. Copies of Minnesota Driver's License/Identification Card Receipts dated March 11, 1998 and July 15, 2002.
6. Copies of Western Union receipts dated December 19, 1999, January 9, 2000, 11, 1998, July 19, 2000, and September 16, 2000, a United States Postal Money Order dated August 15, 1998, and a Money Gram receipt dated August 16, 2002.
7. A copy of a hand-written sales receipt dated April 16, 2001.
8. A copy of a pay stub from Dakota Premium Foods, LLC for pay periods ending April 20, 2002.
9. A statement from [REDACTED]

[REDACTED] states that the applicant rented a room from him for 11 months from December 2000 to November 2001. However, this statement is not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. The notices from Risk Management Alternatives, Inc. are dated February 7, 2001 and March 14, 2001. However, this evidence alone cannot establish the applicant's continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001. Similarly, the evidence listed in Nos. 3, 4, 5, and 6 above indicates the applicant was present in the United States prior to February 13, 2001 but cannot establish continuous residence and continuous physical presence during the requisite periods. The hand-written receipt does not indicate any relationship to the applicant and is therefore of no probative value.

Of the remaining evidence, one of the Receipt Notices indicates a date of July 10, 2001 and is the earliest date presented, on appeal, as evidence of the applicant's presence in the United States.

The applicant has not submitted sufficient evidence to establish her qualifying residence since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. 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 temporary protected status on these grounds will also be affirmed.

Beyond the director's decision, it is also noted that the record contains a Form I-205, Warrant of Removal and Deportation dated January 6, 1999. It does not appear that the warrant was executed. However, it presents the possibility that the applicant was deported and returned to the United States, without permission contrary to section 212(a)(9) of the Immigration and Nationality Act. Consequently, this is further evidence that the applicant may not have maintained continuous residence or physical presence in the United States during the qualifying period pursuant to 8 C.F.R. §§ 244.2(b) and (c).

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.