U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] OFFICE: VERMONT SERVICE CENTER DATE: SEP 06 2006

[EAC 01 167 51590]

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:

[redacted]

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.

Cindy M. Gomez for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was initially denied due to abandonment by the Director, Vermont Service Center. The applicant filed a motion to reopen, stating that she had, in fact, appeared for fingerprinting as required. The director reopened the matter and subsequently denied the application for cause. The application is now before the Administrative Appeals Office (AAO) 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 he found that the applicant had failed to submit requested court documentation relating to her criminal record. The director also determined that the applicant had failed to establish her continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel 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 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

(1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 validity of the latest extension 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 reveals that the applicant filed her initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on April 2, 2001.

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).

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

> *Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.
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> *Misdemeanor* means a crime committed in the United States, either
> (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
> (2) A crime treated as a misdemeanor under the term "felony" of this section.
>
> For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

The record reveals the following offenses:

(1) On May 7, 1999, the applicant was arrested by the Wilson Police Department [North Carolina] and was charged with "Obtain Property False Pretense – Felony," General Statute 14-100;
(2) In Wilson County District Court, Court ORI: [redacted] Court Docket: 1999CR 053837, a disposition date of June 14, 1999, "Dismissal with Leave (By DA)".

Pursuant to a letter dated September 17, 2004, the applicant was requested to submit the final court disposition(s) for the charge(s) detailed above, along with sentencing guidelines and evidence establishing whether any conviction was classified as a misdemeanor or a felony. The applicant was also requested to submit evidence establishing her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted: a medical billing statement dated October 23, 2001, for treatment received in the year 2000; medical documents dated in June and July of 2000; an Acknowledgement of Parentage dated September 15, 2000; and, a District of Columbia Certificate of Birth for a child born to her on July 14, 2000.

The director determined that the applicant had failed to submit final court disposition(s) and other evidence necessary for the proper adjudication of the application and denied the application on December 28, 2004.

On appeal, counsel asserts that the criminal matter has no disposition as of the date of the appeal, and that, therefore, the applicant asks that the denial of her TPS application be reversed and TPS be granted. In support of the appeal, counsel submits: a State of North Carolina Warrant for Arrest, File No. indicating that on May 7, 1999, the applicant was charged with "knowingly and designedly with the intent to cheat and defraud obtain a North Carolina Identification Card from State of North Carolina by means of a false pretense which was calculated to deceive and did deceive," a felony; an SBI Final Disposition Report, for Arrest Number May 7, 1999, with only the arresting agency information completed and the Clerk's Office information blank; and, an attorney's Notice of Appearance dated January 11, 2005, in the matter in proceedings at the District Court Division.

The applicant has failed to provide any evidence revealing the final court disposition of her arrest detailed above. The applicant indicates that the matter has been pending since 1999. However, the record reflects some type of disposition as early as June 14, 1999. In addition, the applicant did not provide a current case status certified by the District Attorney or the Court. The applicant is ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

The second and third issues in this proceeding are whether the applicant 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 noted above, on September 17, 2004, the applicant was requested to submit evidence establishing her continuous residence and her continuous physical presence in the United States during the requisite periods. In response, the applicant submitted the documentation identified above.

The director determined that the applicant had failed to establish her continuous residence and continuous physical presence in the United States because there was a gap between September of 2000 and the filing date in April of 2001.

On appeal, counsel states that the evidence supports the conclusion that the applicant remained in Washington, D.C., caring for her newborn daughter, maintained a residence in the United States since February 13, 2001, and remained physically present in the United States since March 9, 2001. In support of the appeal, counsel submits: an immunization record for her child bearing dates in 2000 and 2001; a Certified Mail Receipt in the applicant's name postmarked on March 30, 2001; generic rent receipts dated "01-04-2001," and March 5, 2001; a money transfer receipt dated February 4 [illegible];a Bank of America deposit slip in her name, indicating the account was opened in February 2001; a notarized letter attesting to the applicant's character and residence; another copy of the child's birth certificate; and; another copy of the biographic page of the applicant's El Salvadoran passport issued by the Consulate General, Washington, D.C., on August 10, 2000.

The applicant has submitted sufficient evidence to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing her application. Therefore, the applicant has met the requirements under 8 C.F.R. § 244.2(b) and (c) and has overcome these findings of the director.

Beyond the decision of the director, the record contains only a photocopy of the biographic page of an El Salvadoran passport issued in Washington, D.C. on August 10, 2000. While the passport is generally sufficient to establish nationality, it is noted that the applicant claimed at the time of her arrest to be a citizen of Mexico. The applicant failed to submit a birth certificate, with English translation, an El Salvadoran cedula, or any documentation from her country of origin bearing a photograph and/or fingerprint issued prior to her arrival in the United States that would conclusively substantiate her nationality.

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.