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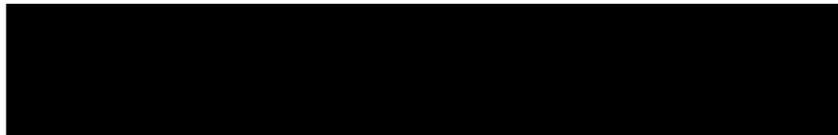
Office: CALIFORNIA SERVICE CENTER

Date: SEP 25 2006

[WAC 03 027 54082]

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.

Cindy M. Gomez for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center on August 28, 2003. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on August 19, 2004. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted. The case will be remanded.

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 her identity and nationality. The director also determined that the applicant failed to establish that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant provided a brief statement. The applicant had provided sufficient evidence to establish her identity and nationality, therefore, overcame that portion of the director's decision.

The AAO dismissed the appeal finding that the applicant failed to provide 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.

On motion, the applicant provides a brief statement and additional documentation.

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 condition described in paragraph (f)(2) of this section.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, 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 by the Secretary of the Department of Homeland Security, with the latest extension valid until September 9, 2007, 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 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 issues in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001.

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.

On motion, it is stated that on August 19, 2004, the Service mailed to the applicant "a denial of appeal due to not establishing her identity, continuous residence and physical presence." It is also stated that the applicant does not understand why her application is "considered late if she applied 3 days before Sept 9, 2002."

The applicant submits: a copy of her birth certificate along with the English translation; a copy of the biographical page of her El Salvadorian passport; a copy of a Cumulative Record – Adult Education from ██████████ Community Adult School in Los Angeles, California, which indicates courses taken by the applicant in April 2000, January 2001, June 2001, January 2002, and June 2002; copies of postmarked envelopes addressed to the applicant, dated July 13, 2000 and February 13, 2001; copies of Cytopathology Reports, dated November 10, 2000 and September 9, 2001, and an evaluation report dated January 9, 2001, from ██████████ CHCLS Comprehensive Health CTR COLPO Clinic in Los Angeles, California; a report from Cedars Sinai Laboratory Services, dated February 12, 2001; a copy of an affidavit from ██████████ who states that she has known the applicant since October of 2000, and that the applicant was her roommate from November of 2000 until March of 2002; and a "Verification of Employment" letter from ██████████ who states that the applicant has worked for his company since "November 1, 2000 to present; she works 40 hours per week and gets paid \$230.00 per week."

The additional documentation presented on motion is sufficient in demonstrating that the applicant has been continuously residing in the United States since February 13, 2001, and that she has been continuously physically present in the United States since March 9, 2001. Consequently, the applicant has overcome all of the adverse findings of the director. However, the application may not be approved, as the applicant has not established her eligibility to file for late registration.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed her application with the Immigration and Naturalization Service, now CIS, on September 13, 2002.

The matter will be remanded to the director to afford the applicant the opportunity to provide evidence to establish her eligibility to file for late registration.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director in accordance with the above, and entry of a new decision.