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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: Vermont Service Center

Date:

APR 04 2007

[EAC 04 039 51166]

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The case will be reopened and the appeal will again be dismissed.

The applicant claims to be a 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 had failed to establish she was eligible for late registration, and had failed to establish she had been a resident of the United States since prior to February 13, 2001.

A subsequent appeal from the director's decision was dismissed on February 27, 2006, after the Director of the AAO also concluded that the applicant had failed to establish that she was eligible for late registration. On motion to reopen, the applicant reasserts her claim of eligibility for TPS and submits evidence in an attempt to establish her continuous presence and residence during the required period.

The applicant claims to be a 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.

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 designated by the Attorney General 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial application with Citizenship and Immigration Services (CIS) on March 30, 2001.

The record reveals that the applicant filed an initial application, Form I-821, on March 30, 2001, under receipt number EAC 01 164 55355, which was denied due to abandonment. The applicant filed a motion to reopen which was denied on December 16, 2002. The applicant filed the current Form I-821 on November 17, 2003. This application was denied on July 13, 2004, due to abandonment. A subsequent appeal to the AAO was denied on February 27, 2006. The matter is now before the AAO on motion.

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 motion counsel for the applicant asserts that the applicant has good cause for failing to register during the initial period, but fails to articulate the specific good cause reason for her failure to do so. Counsel's circular reasoning and conclusory assertion is evident in the following statement "[The Applicant] is eligible for the late registration provisions of the Temporary Protected Status ("TPS") program based on the applicant's eligibility pursuant to 8 C.F.R. § 244.2(f)." Good cause relates only to cases where the applicant was granted TPS and the TPS was withdrawn due the applicant's failure to re-register annually. That is not the case with this application, as the applicant has never been granted TPS. As noted above, the applicant has twice failed to respond to requests from CIS.

The applicant has submitted evidence in an attempt to establish her qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Form I-821, 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 Chief's decision to deny the application for TPS will be affirmed.

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. Subsequent extensions of the TPS designation have been granted, 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).

In this case the applicant has submitted copies of ADP earnings statements, a VA driver's license learner's permit dated March 12, 2001, INS correspondence dated April 30, 2001, May 14, 2001, medical records, hospital receipts, birth certificates, bank statements, Sprint PCS billing statements, Allstate Insurance transaction history statements, copies of International Money Order receipts, employer letters, and letters of attestation.

The amount of evidence submitted by the applicant tends to corroborate her assertions of continuous presence from the date of her Virginia Driver's license permit, March 12, 2001, until the time of filing the current application. Thus, the period at issue for this case is residence in the United States prior to February 13, 2001, and continuous presence in the United States since March 9, 2001.

The record contains the following evidence with regard to the period at issue:

1. Copy of ADP earnings statements from the [REDACTED] covering the period January 31, 2001, to February 9, 2001.

2. Copy of ADP earnings statements from the [REDACTED], covering the period December 29, 2000 to March 10, 2000.
3. Copy of ADP earnings statements from the [REDACTED], covering the period July 12, 1999, to July 30, 1999.
4. Copy of ADP earnings statements from the [REDACTED] c., covering the period and May 15, 2000, to May 25, 2000.
5. Copy of her Republica de El Salvador passport, issued at the Consulate General in Washington, DC, on June 16, 2000.

The ADP earnings statements listed above are not sufficiently credible to corroborate the applicant's assertions. The applicant has submitted two different copies of the earnings statement listed above, one contains a social security number that is different from the social security number the applicant has listed elsewhere, and the remaining statements contain no social security numbers at all. For this reason the statements are not credible and will not be given any weight in these proceedings.

This leaves one item of evidence to corroborate the applicant's assertion of residence and presence, her passport. A single piece of evidence is not sufficient to demonstrate continuous physical presence and residence for eight months, from June 16, 2000, to March 13, 2001. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. In this case a single piece of evidence is not sufficiently probative to establish the applicant's presence and residence during the period at issue.

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.