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U.S. Citizenship
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Services

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AUG 03 2007

FILE:



[WAC 05 196 70018]

Office: CALIFORNIA SERVICE CENTER

Date:

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is 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 failed to establish her eligibility for TPS late registration. The director also determined that the applicant failed to establish her qualifying continuous residence and continuous physical presence in the United States.

On appeal, the applicant asserts her claim of eligibility for TPS and submits some evidence in an attempt to establish her eligibility 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 designated by the Attorney General is eligible for TPS 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.

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. 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 validity until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed the instant application with Citizenship and Immigration Services (CIS) on April 14, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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).

On July 25, 2006, the director requested the applicant to submit evidence to establish her eligibility for TPS late registration. In addition, the applicant was requested to submit evidence to establish her nationality/identity. The

director determined that the applicant did not respond to the request, and denied the application on September 18, 2006.

On appeal, the applicant states that she did not receive the director's request for evidence. The applicant also states that she has resided in the United States since February 13, 2001, and that she should qualify as a late TPS registrant because she has an approved Form I-130. In addition, the applicant submits copies of the following in support of her claim of eligibility for TPS:

1. The director's notice of decision and notice of intent to deny dated February 5, 2006;
2. A letter dated March 4, 2006, in response to the director's February 5, 2006, notice;
3. Her parent's Permanent Resident Cards;
4. Her El Salvadoran passport and birth certificate with English translation;
5. An Approval Notice for her Form I-130, dated October 5, 2005;
6. Her student identification cards for the years 1995 through 1997;
7. Her school grade reports for 1995, 1996, and 2004;
8. Attendance reports for the years: 1996 and 1997;
9. Her California Identification cards issued in 1997 and 2004;
10. Several earnings statements from Fastaurants, Incorporated dated August 20, 1999, September 3, 1999, September 20, 1999, January 5, 2000, and January 20, 2000;
11. Her Form 1040, Individual Income Tax Returns for the years: 1999, 2000, 2001, 2002, 2004, and 2005;
12. Immunization records and birth certificate for her son, [REDACTED] born on December 11, 1997;
13. A letter from the Martin Luther King Jr./Drew Medical Center stating that her son, [REDACTED] was born on November 21, 2002;
14. A letter dated March 1, 2006, from [REDACTED], stating that the applicant is a registered member of his parish;
15. A letter dated March 4, 2006, from [REDACTED] stating that she has known the applicant since January 2000; and,
16. The asylum applications for her mother [REDACTED] and father ([REDACTED])

The first 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, to the date of filing her application.

On appeal, the applicant submits sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence since March 9, 2001, to the date of filing her application. Therefore, the director's decision on these issues will be withdrawn.

The second issue in this proceeding is whether the applicant has established her eligibility for TPS late registration.

On appeal, the applicant states that she has an approved I-130 petition. She indicates that she is eligible for late registration due to the fact that she was the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf under section 203(a)(2)(B) of the Act. The applicant also submits, on appeal, documentation reflecting that she is the beneficiary of an approved Form I-130 filed on her behalf under section 203(a)(2)(B) of the Act. However, individuals who are awaiting preference allocation for an immigrant visa under section 203 of the Act are not eligible for late registration under 8 C.F.R. § 244.2(f)(2).

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 application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.