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U.S. Citizenship
and Immigration
Services

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AUG 21 2007

FILE:



[EAC 06 327 78189]

OFFICE: Vermont 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, Vermont Service Center (VSC). It is now on appeal before the Administrative Appeals Office (AAO). 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 on the grounds that the applicant failed to establish that she was eligible for late TPS registration, that she has continuously resided in the United States since February 13, 2001, and that she has been continuously physically present in the United States since March 9, 2001.

On appeal the applicant requests that her case be reviewed.

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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed her initial Form I-821, Application for Temporary Protected Status, on August 6, 2006 – nearly four years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions 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 Citizenship and Immigration Services (CIS). See 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. See 8 C.F.R. § 244.9(b).

On January 8, 2007, the VSC issued a Notice of Intent to Deny (NOID) in which it requested the applicant to submit evidence that she was eligible for late registration and that she met the continuous residence and physical presence requirements for TPS applicants from El Salvador. In response the applicant submitted photocopies of her El Salvadoran passport issued by the Consulate General in Los Angeles, California, in August 2006; photo identification cards issued to the applicant by Reseda High School in Los Angeles for the academic years 2002-03, 2003-04, and 2004-05; the applicant's high school attendance records for the academic years 2003-04 and 2004-05; a California driver's license issued to the applicant on October 3, 2003; a Nevada Identification Card issued to the applicant of uncertain date; the applicant's immunization record with four stamped entries from a

Van Nuys, California, medical facility between April 30 and October 31, 2003; and the applicant's El Salvadoran birth certificate.

On February 21, 2007, the director denied the application on the grounds that the applicant failed to establish that she was eligible for late TPS registration, that she had been continuously resident in the United States since February 13, 2001, and that she had been continuously physically present in the United States since March 9, 2001.

On appeal the applicant reiterates her contention that she is eligible for TPS, but does not submit any additional evidence. The AAO concurs with the director's decision that the applicant is ineligible for TPS.

As previously discussed, the applicant filed her Form I-821 on August 6, 2006 – nearly four years after the close of the initial registration period for El Salvadoran nationals on September 9, 2002. The record indicates that the applicant's mother [REDACTED] filed an asylum application (Form I-589) in 1995, on which the applicant was later added as a dependent. That application was withdrawn and administratively closed on May 5, 2005, however, when the applicant's mother was granted other relief under the Nicaraguan Adjustment and Central American Relief Act (NACARA). Since the applicant's qualifying condition for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii) terminated with the withdrawal of her mother's asylum application, the applicant had to file her TPS application by Monday, July 7, 2005, to comply with the 60-day deadline specified in 8 C.F.R. § 244.2(g). The applicant did not file her Form I-821 until August 6, 2006, however, which was more than a year too late to make her eligible for late TPS registration. Accordingly, the director's denial of the TPS application on that ground will be affirmed.

Furthermore, even if the applicant had filed her Form I-821 within the requisite 60-day period, the record clearly shows that she has not been continuously physically present in the United States since March 9, 2001, and a continuous resident in the country since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). On her Form I-821 the applicant states that she entered the United States on January 2, 2003. The evidence of residence and physical presence previously submitted, and cited above, is consistent with this statement, since none of the documentation dates before 2003 and none of the documentation indicates in any manner that the applicant was in the United States before the beginning of 2003. Accordingly, the director's denial of the TPS application for failure to meet the continuous residence and physical presence requirements will also 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 that burden.

ORDER: The appeal is dismissed.