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U.S. Citizenship
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FILE:



OFFICE: Vermont Service Center

DATE:

AUG 27 2007

[EAC 06 294 83905]

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 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 required for TPS applicants from El Salvador.

On appeal the applicant asserts that she is eligible for TPS derivatively through her husband.

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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until March 9, 2009, 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). *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).

The record shows that the applicant was married in El Salvador on February 23, 1990, entered the United States without inspection on December 23, 2004, and filed her initial Form I-821, Application for Temporary Protected Status, on July 17, 2006 – nearly four years after the close of the initial registration period for El Salvadoran nationals. On September 13, 2006, the VSC Director sent a notice to the applicant acknowledging that she is eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv), but advising that she intended to deny the application unless the applicant submitted a national identity document with photo identification, as well as documentary evidence of her continuous residence in the United States since February 13, 2001, and continuous physical presence in the country since March 9, 2001. In response, the applicant submitted photocopies of her El Salvadoran passport and national identity document.

On January 10, 2007, the director denied the application on the grounds that the evidence of record failed to establish the applicant's continuous physical presence in the United States since March 9, 2001, and her continuous residence in the United States since February 13, 2001, in accordance with section 244(c)(1)(A)(i) and (ii) of the Act.

On appeal the applicant reiterates her claim that she is eligible for TPS as the spouse of a currently eligible TPS registrant [REDACTED]. To be eligible for late TPS registration as the wife of a TPS registrant, however, the applicant must meet the same continuous residence and continuous physical presence requirements as her husband. There is no evidence in the record that the applicant has been continuously physically present in the United States since March 9, 2001, and continuously resident in the county since February 13, 2001, as required for TPS applicants from El Salvador under section 244(c)(1)(A)(i) and (ii) of the Act and 8 C.F.R. § 244.2(b) and (c). In fact, the applicant specifically stated on her TPS application that she did not enter the United States until December 23, 2004. Accordingly, the applicant does not meet the continuous physical presence and continuous residence requirements for El Salvadoran nationals applying for TPS. The director's denial of the application on these grounds will therefore 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.