



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

M1

FILE: [REDACTED]
[EAC 03 260 56806]

Office: VERMONT SERVICE CENTER

Date: JAN 05 2007

IN RE: Applicant: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

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 she was eligible for late registration. The director also found that the applicant had failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement and additional evidence.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period. That application was denied on May 3, 2002, for failure to respond to a request for evidence to establish her eligibility for TPS. The director informed the applicant that there is no appeal from a denial due to abandonment, but she could a motion to reopen the case within 30 days of the issuance of the denial decision. The applicant filed a motion to reopen the case on January 17, 2003. The director dismissed the motion because the applicant had not met the requirements for a motion to reopen or reconsider and also because the motion was not timely filed.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on September 17, 2003. The director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. Since the applicant did properly file an application during the initial registration period, the director erred in her explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on April 9, 2001. The director denied that initial application on May 3, 2002. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed the current Form I-821 on September 17, 2003. Since the initial application was denied on May 3, 2002, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 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 § 244.3;
- (e) Is not ineligible under § 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.

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, with the latest granted until September 9, 2006, 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 her TPS application with Citizenship and Immigration Services (CIS) on September 17, 2003.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed her current TPS application after the initial registration period had closed. 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 November 13, 2003, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her identity and nationality and her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, submitted evidence relating to residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on May 21, 2004.

On appeal, the applicant states that she has lived in the United States since December 2, 1998. She submits a photocopy of the biographic page of her Salvadoran passport to establish her identity and nationality and evidence relating to her 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 director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant indicated on her Form I-821 that she first entered the United States on December 2, 1998. The applicant submitted the following evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods:

1. a laboratory cytology report dated February 5, 2000;
2. an affidavit dated October 24, 2002, from [REDACTED] stating that the applicant has lived in the United States since 1998;
3. an affidavit dated January 7, 2003, from [REDACTED] stating that she has known the applicant for a couple of years;
4. an affidavit dated January 7, 2003, from [REDACTED] stating that she has known the applicant for two years; and,
5. an affidavit dated January 7, 2003, from [REDACTED] stating that she has known the applicant for a long time because the applicant was her sister's best friend in El Salvador.

As stated above, the applicant was requested on November 13, 2003, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, submitted the following:

6. a letter from [REDACTED] stating that the applicant lives at "[REDACTED] [REDACTED] or, College Point, New York," and is a person of good moral character;
7. an affidavit dated November 24, 2003, from [REDACTED] stating that she met the applicant in 2000;
8. an affidavit dated November 24, 2003, from [REDACTED] that she met the applicant in 1999 and has been friends with her since that time;
9. an affidavit dated November 19, 2003, from [REDACTED] stating that she met the at her church in 1999; and,
10. a receipt dated August 15, 2000, from Fifth Avenue Electronics of Queens, New York.

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant repeats her claim that she has lived in the United States since December 2, 1998. She submits the following:

11. a photocopy of the biographic page of her Salvadoran passport issued in Long Island, New York, on July 5, 2001;
12. an affidavit dated June 2, 2004, from [REDACTED] stating that the applicant has lived in his house located [REDACTED], College Point, New York, since January 1, 2001;
13. an affidavit dated June 7, 2004, from [REDACTED] stating that he has known the applicant since 1998;
14. an affidavit dated June 10, 2004, from [REDACTED] stating that the applicant is his neighbor;
15. an affidavit dated June 9, 2004, from [REDACTED] stating that she met the applicant in January 1999 and they have been friends since that time;
16. a photocopy of a Verizon billing statement for the billing period from March 1, 2002 to March 31, 2002;
17. a photocopy of a Con Edison billing statement dated April 1, 2002;
18. a photocopy of a letter dated November 22, 2003, from St. Vincent Catholic Medical Centers Portable Mammography Initiative;
19. a photocopy of a billing statement December 1, 2003, from Catholic Medical Center in Hartford, Connecticut; and,
20. a photocopy of a billing statement dated December 10, 2003, from Mary Immaculate medical facility in New York, New York.

Without corroborative evidence, the affidavits and letter listed in Nos. 2-9 and 12-15 above are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

The laboratory report (No. 1 above) and the receipt dated August 10, 2000 (No. 10 above) predate the requisite periods to establish continuous residence and continuous physical presence in the United States.

The applicant has submitted only one document to establish her residence and physical presence in the United States in 2001 and in 2002, and only three documents to establish her residence and physical presence in the United States in 2003.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds 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 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.