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U.S. Citizenship
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FILE: [REDACTED]
[WAC 04 028 52501]

OFFICE: California Service Center

DATE:

JUN 04 2007

IN RE: Applicant:

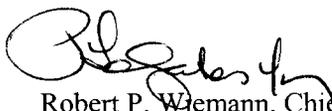


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 (CSC). 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 filed her initial application for TPS during the initial registration period or was eligible for late TPS registration; failed to establish her continuous residence and continuous physical presence in the United States for the required periods of time; and failed to establish her identity and nationality.

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.

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 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 through 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). 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 first issue in this proceeding is whether the applicant filed a timely application for TPS. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant did not properly file her initial TPS application with CIS until November 7, 2003 – 14 months 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 satisfied at least one of the criteria enumerated in 8 C.F.R. § 244.2(f)(2) above, and that she filed her application within 60 days of the end of that condition, as specified in 8 C.F.R. § 244.2(g).

In his denial decision issued on March 3, 2004, the director determined that the applicant had failed to establish that she filed a TPS application during the initial registration period or that she was eligible for late registration.

On appeal the applicant claims that she mailed her initial application for TPS to CIS on September 7, 2002, along with a money order in the amount of \$100.00. In support of her claim the applicant submits photocopies of (1) a \$100 postal money order with the issue date identified as "September 7, 2002," (2) an Express Mail envelope addressed to the INS (Immigration and Naturalization Service, now CIS) office in Laguna Niguel, California, stamped September 7, 2002, and (3) a PS Form 3811 addressed to the same office with a stamp reading "Immigration and Naturalization Service Received by Sep. 9, 2002." This photocopied

documentation is not persuasive evidence, however, that a timely TPS application was filed. CIS data records do not confirm that the applicant ever submitted a TPS application during the initial registration period for El Salvadoran nationals, which closed on September 9, 2002. Despite the receipt stamp on the PS Form 3811, the AAO notes that the form contains no entries in the section entitled "Complete This Section on Delivery." There is no name or signature of an INS official confirming receipt of the Express Mail package, and the "Date of Delivery" box is blank. Furthermore, none of the foregoing documentation identifies the contents of the Express Mail package.¹

The applicant asserts that her evidence of mailing documents to a correct address is sufficient for purposes of establishing that a timely TPS application was filed, even though the Laguna Niguel office cannot locate it. The applicant's argument is not correct. The regulation at 8 C.F.R. § 244.1 defines the procedure to register for TPS as follows: "*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." For the reasons discussed above – including the lack of confirmation by the Laguna Niguel office that it received the purported Express Mail package from the applicant in September 2002 – the record does not establish that the applicant registered for TPS during the initial registration period by filing a TPS application with the director on or before September 9, 2002.

Nor has the applicant submitted any evidence that she is eligible for late TPS registration under any of the qualifying criteria enumerated at 8 C.F.R. § 244.2(f)(2).

Accordingly, the director's denial of the application on the ground that the applicant neither filed a TPS application during the initial registration period nor established her eligibility for late registration will be affirmed.

The second and third issues in this proceeding are 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. In support of her claim, the applicant has submitted the following documentation:

1. An affidavit from [REDACTED], dated September 7, 2002, who states that the applicant arrived in the United States in December 1996 and that she rented a room to her for a year.
2. An affidavit from [REDACTED] dated September 7, 2002, who states that he has known the applicant since March 1997 and that she has performed cleaning services for him over the years.
3. A letter from [REDACTED] of the Banco Agricola in San Francisco, California, dated September 11, 2002, stating that the applicant has "ordered 33 transactions" involving money transfers to El Salvador since April 15, 1997.
4. Photocopied earnings statements from Taqueria El Nayarita in San Mateo, California, made out to the applicant for the following pay dates: May 30, 2002; October 24, 2002; February 6, 2003; and September 10, 2003.

¹ The AAO notes that the applicant has submitted on appeal a photocopy of an Application for Employment Authorization (Form I-765), dated September 7, 2002, but no photocopy of the Application for Temporary Protected Status (Form I-821) she assertedly mailed on the same date. (CIS records do not indicate that the applicant actually filed a Form I-765 in September 2002).

The AAO concurs with the director's decision that the documentation of record does not demonstrate the applicant's continuous residence in the United States since February 13, 2001 and continuous physical presence in the United States since March 9, 1991. Letters and affidavits from acquaintances are not, by themselves, persuasive evidence of an alien's residence and physical presence in the United States during the requisite time periods for TPS. As for the payroll records, they all date from 2002 and 2003 and thus provide no evidence of the applicant's residence and physical presence in the United States during 2001. The AAO determines that the evidence of record does not meet the documentary standards of 8 C.F.R. § 244.9(a)(2) to establish that the applicant has been continuously physically present in the United States since March 9, 2001, and a continuous resident of the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Therefore, the director's denial of the application on these grounds will also be affirmed.²

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The director's decision to deny the application for TPS will be affirmed. 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.

² Although the director also found that the applicant failed to establish her identity and nationality, the AAO is satisfied that she has met this requirement, in conformance with 8 C.F.R. § 244.9(a)(1), based on photocopies of her El Salvadoran passport, issued by the Consulate General in San Francisco on December 8, 2003, and an electoral identification card with a personal photograph issued to the applicant by the El Salvadoran government on December 9, 1993.