



U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUN 08 2007

[EAC 02 098 53858]
[WAC 05 133 70157]

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:

[REDACTED]

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 initial application was reopened on motion by the Director, Vermont Service Center, and approved. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and it will be denied. The applicant's appeal of the re-registration denial 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 may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1). If a decision to withdraw Temporary Protected status is entered by the AAO, the AAO shall notify the alien of the decision and the right to a *de novo* determination of eligibility for Temporary Protected Status in removal proceedings, if the alien is then removable. 8 C.F.R. § 244.14(c).

The applicant filed an initial application for TPS under receipt number EAC 02 098 53858. The Director, Vermont Service Center, denied the initial application on April 16, 2003, due to abandonment. The applicant filed a motion to reopen on September 2, 2003. The director granted the motion to reopen and dismissed the case on February 4, 2004, after determining that the applicant was not eligible for TPS.

The applicant appealed the director's February 4, 2004 decision on February 17, 2004. The AAO remanded the case to the Vermont Service Center on October 5, 2005, because the TPS application had been denied due to abandonment.

The record of proceeding shows that the service center reopened the TPS application on motion and approved it on March 20, 2007. However, the record reveals that the director's decision was in error. Specifically, the record reveals that the applicant failed to submit sufficient evidence to establish her continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States.

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.

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. An extension of the program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. Subsequent extensions of the TPS designation have been granted with the latest extension valid until 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). 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).

The applicant submitted the following documentation:

1. A photocopy of the applicant's El Salvadoran passport issued to her in El Salvador on August 31, 2001;
2. Copies of handwritten rent receipts bearing the applicant's name and dated December of 2000 and April of 2001;
3. An affidavit from [REDACTED] in which he stated that he has known the applicant to be present in the United States since November 10, 2000, and that at present she works for Kraft Industry in Winchester, Virginia; and,
4. An affidavit from [REDACTED] in which she stated that she has known the applicant to be present in the United States since November 10, 2000, and that at present she works for Kraft Industry in Winchester, Virginia.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Although the applicant stated in her TPS application that she has been present in the United States since November 10, 2000, her El Salvadoran passport indicates that it was issued to her in El Salvador on August 31, 2001. Therefore, she cannot statutorily establish her residence and presence in the United States in accordance with 8 C.F.R. §§ 244.2(b) and (c).

It is noted that the affidavits and receipts submitted by the applicant as evidence contain information that is in direct conflict with the information contained in the applicant's El Salvadoran passport, with respect to the time she has been present in the United States. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies. It is further noted that without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's residence and physical presence in the United States.

The applicant has failed to establish that she has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's approval of the applicant's TPS application, receipt number EAC 02 098 53858, will be withdrawn and the application will be denied.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 10, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied on April 16, 2003, and the applicant was not eligible to apply for re-registration for TPS.

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.

In this case, the AAO has *sua sponte* reopened the initial TPS application, withdrew the director's approval, and denied it. Therefore, the applicant is not eligible for TPS re-registration. Consequently, the director's decision to deny the re-registration application will be affirmed.

ORDER: The initial application is reopened, and the applicant's Temporary Protection Status is withdrawn. The applicant's appeal of the denial of the re-registration application is dismissed.