



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

MI

[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUN 25 2007

[WAC 05 211 83465]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 had failed to establish: (1) that she was eligible for late registration; (2) her nationality and identity; and (3) that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence, including evidence previously furnished and contained in the record.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General 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 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

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 application on April 29, 2005.

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

The record of proceeding confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

In a Notice of Intent to Deny (NOID) dated July 25, 2006, 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 to establish nationality and identity, and evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. The director noted that the evidence furnished in response to the NOID was insufficient to establish eligibility for TPS and denied the application on August 24, 2006.

On appeal, the applicant submits evidence in an attempt to establish residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Application for Temporary Protected Status within the initial registration period.

The applicant neither addressed nor 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 decision to deny the TPS application on this ground will be affirmed.

The second issue in this proceeding is whether the applicant has established her nationality and identity.

In a Notice of Intent to Deny dated July 25, 2006, the applicant was requested to submit evidence to establish nationality and identity. In response, the applicant submitted (1) a copy of an El Salvadoran passport issued to the applicant in El Salvador on November 23, 2001, and (2) a copy of a personal identification card issued in El Salvador on December 11, 2000.

The applicant has, therefore, overcome this ground for denial.

The third issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

As stated above, the applicant was requested on July 25, 2006, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The director noted that the evidence submitted in response to the NOID was insufficient to establish continuous residence and continuous physical presence during the requisite period and denied the application on August 24, 2006.

It is noted that in response to the NOID, the applicant submitted various documentation dating from July 2002 to July 2006. The applicant also submitted:

- (1) Copies of rent receipts dated March 5, 2001 and May 5, 2001, signed by [REDACTED] and a statement or rent contract from [REDACTED] written in the Spanish language, without English translation as required by 8 C.F.R. § 103.2(b)(3).
- (2) A billing statement from [REDACTED] Dale, Indiana, for dental services rendered on February 27, 2001. It is noted that this statement appears to have been altered as the applicant's name and address were typed in a different font than that of the surrounding text.

On appeal, the applicant asserts that she has "been in the United States physically since before the TPS program came into effect." She submits a character reference from her sister, [REDACTED], including evidence previously furnished and contained in the record.

As determined by the director, the applicant has failed to submit sufficient evidence to establish residence and physical presence in the United States during the requisite period. The evidence listed as Nos. (1) and (2) above appears not to be credible evidence. It is also noted that the applicant's passport was issued in El Salvador on November 23, 2001; therefore, it appears that the applicant was not present in the United States during the period required to establish continuous residence and continuous physical presence. 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, in fact, 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 discrepancy in the evidence she provided. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

Accordingly, the applicant has failed to establish that she has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application on this ground 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.