



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date:

MAR 05 2007

[WAC 05 270 70069]

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be dismissed.

The applicant is stated to be 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 record reveals that the applicant filed a late initial TPS application on August 25, 2003, under CIS receipt number SRC 03 235 54309. The director, Texas Service Center, denied the application, on January 13, 2004, because the applicant failed to establish that she was eligible for late registration. The director also found that the applicant had failed to submit credible evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In addition, the director found that the applicant failed to submit an original birth certificate.

A subsequent appeal from the director's decision was dismissed on April 20, 2005, after the Director of the AAO also concluded that the applicant had failed to establish that she was eligible for late registration, and that the applicant had failed to submit credible evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. On motion to reopen, the applicant reasserts her claim of eligibility for TPS.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant's motion to reopen consists only of a statement that she would like her case reopened to give her an opportunity to be legal in this country. With the motion, in an attempt to establish her continuous residence and her continuous physical presence, the applicant submits photocopies of:

1. A Broward County Standards-Based Progress Report for the school year 2002 - 2003;
2. Two Broward County Standards-Based Interim Reports, dated May 12, 2003, September 18, 2003;
3. A Kindergarten Newsletter, from West Hollywood Elementary school, for October 2003;
4. A Florida Certification of Immunization, dated March 12, 2003;
5. A Certificate of Appreciation presented to the applicant from Young Friends Of The Everglades;
6. Two Parent Permission Forms for field trips in February 2004, and April 2004;
7. A document with the applicant's photograph and palm print, dated September 2003;
8. A document from Fox-Mar Photography depicting the applicant's school photograph; and
9. A letter, dated January 24, 2004, from the [REDACTED] Elementary School principal, congratulating the applicant for 100% attendance at the school from December 11, 2003.

There was no documentation relating to applicant's late initial registration. The primary basis for the denial of the application and the appeal was the applicant's failure to file her Application for Temporary Protected Status within the initial registration period or to establish her eligibility for late registration for TPS. The motion does not address the applicant's eligibility for late initial registration. As such, the issue on which the underlying decisions were based has not been addressed or overcome on motion.

It is noted that the applicant has not submitted sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the requisite period. In addition, some of the documentation submitted on behalf of the applicant is questionable. For example, the Florida Certification of Immunization, dated March 12, 2003, lists four series of vaccination doses administered in 1997, 1998, 2001, and 2002. However, it is noted that the applicant stated in her initial Form I-821, Application for Temporary Protected Status, and on her initial Form I-765, that she did not enter the United States until February 10, 2000. 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 discrepancies in the entry dates in the record, and her supporting evidence. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish her continuous residence and continuous physical presence in the United States during the requisite period. Therefore, the application will also be denied for these reasons.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated April 20, 2005, is affirmed.