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U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: California Service Center

DATE:

MAR 29 2007

[WAC 05 221 74563]

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 cursive script that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims 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 director denied the application on the grounds that the applicant failed to establish that she was eligible for late TPS registration, that she was continuously resident and physically present in the United States since the dates applicable for TPS applicants from El Salvador, as well as her nationality.

On appeal the applicant asserts that she has been living in the United States since 1989 and that she has been a derivative beneficiary of her parents' asylum application since then.

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.

- (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 in the United States since March 9, 2001. 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 Form I-821, Application for Temporary Protected Status, on May 9, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) above.

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).

On February 9, 2006, the service center issued a Notice of Intent to Deny (NOID) in which it requested the applicant, who claims to have entered the United States without inspection on May 12, 1989, to submit evidence that she was eligible for late registration and met the continuous residence and physical presence requirements for TPS applicants from El Salvador, as well as evidence of her nationality and identity. The applicant failed to respond within the 33-day period indicated in the NOID.

On April 7, 2006, therefore, the director denied the application on the grounds that the applicant failed to establish that she was eligible for late TPS registration, that she was continuously resident and continuously physically present in the United States since the applicable dates for El Salvadoran nationals, and that she is an El Salvadoran national.

On appeal the applicant asserts that she has been residing in the United States continuously since 1989, that her parents filed an asylum application that year, and that she is a derivative beneficiary of that application. Though the applicant stated she would gather documentation pertaining to her parents' asylum application, no such documentation has been submitted. Even if such documentation were submitted, and the applicants' parents had registered for TPS, the applicant would not have been a derivative beneficiary of that application because she could not qualify as the child of a TPS beneficiary after she turned 21 on October 22, 1999, which was prior to the initial filing period for TPS applicants. Thus, there is no evidence that the applicant – whose TPS application was filed nearly three years after the end of the initial registration period for El Salvadoran nationals – is eligible for late registration under the qualifying condition at 8 C.F.R. § 244.2(f)(2)(ii), or any other criteria enumerated under 8 C.F.R. § 244.2(f)(2). The only evidence in the record of the applicant's prior residence in the United States is a photocopy of a 2001 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement. There is no documentation dating before or after that year. Thus, the applicant has failed to establish that she has been continuously physically present in the United States since March 9, 2001, and continuously resident in 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). Furthermore, the evidence of the applicant's nationality does not comport with the documentary requirements set forth in the NOID and at 8 C.F.R. § 244.9(a)(1). Accordingly, the director's denial of the application on the foregoing grounds will 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 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 that burden.

ORDER: The appeal is dismissed.