



U.S. Citizenship
and Immigration
Services

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FILE:



[EAC 03 169 52450]

Office: Vermont Service Center

Date:

MAY 11 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.

Cindy N. Gomez

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant claims to be 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 failed to establish she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits additional evidence.

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.

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 designation for El Salvadorans TPS was granted by the Attorney General through 2003. Subsequent extensions 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 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 initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with Citizenship and Immigration Services (CIS) on April 24, 2003.

The record of proceedings 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, she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On August 19, 2003, 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 establishing her qualifying continuous residence and continuous physical presence in the United States, and evidence of her nationality and identity.

The applicant, in response, provided the following documentation:

1. a notarized statement from [REDACTED] who states that she has known the applicant for "approximately 6 years;"
2. an undated handwritten notarized statement from [REDACTED] who attests to having known the applicant since 1997;
3. a letter dated August 29, 2003, from [REDACTED] and [REDACTED] indicating that the correspondents have known the applicant for eight years, and that the applicant had cared for their son in the past;
4. documentation relating to an April 7, 1997, civil court case involving the applicant and a cleaning firm;
5. an Employment Authorization Document (EAD) issued to [REDACTED] [listed as the applicant's husband] indicating validity from March 10, 2003 to September 9, 2003;
6. an insurance policy issued to [REDACTED] on December 23, 2002, indicating that the policy does not apply to accidents involving the applicant; and,
7. discharge/medication instructions issued to the applicant on December 26, 2002, by [REDACTED] [REDACTED] Frederick, Maryland.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on January 12, 2004.

On appeal, the applicant submits the following additional evidence:

1. a notarized statement from [REDACTED] who states that he has known the applicant since January 2001; and,
2. another EAD issued to [REDACTED] indicating validity from September 29, 2003 to March 9, 2005.

On appeal, the applicant asserts she is the spouse of an alien currently eligible for TPS. In support of her assertion, the applicant submits photocopies of EADs indicating that [REDACTED] was approved for TPS (a

photocopy of a previous EAD issued to Mr. [REDACTED] was submitted earlier by the applicant in response to the notice of intent). According to 8 C.F.R. § 244.2(f)(2)(iv), spouses of aliens who are TPS-eligible may file their applications after the initial registration period has closed. This regulation, however, does not relax the requirements for eligibility for TPS. As the applicant has failed to provide a marriage certificate, there is no evidence in the record to indicate that a marriage relationship existed prior to or during the initial registration period. As such, the applicant is unable to claim TPS eligibility as the spouse of a TPS registrant. If such evidence of the marriage were to be provided at a later date, then the applicant's alleged spouse's record would be reviewed to further determine both the applicant's and his [continued] eligibility.

The applicant submitted evidence in an attempt to establish her qualifying continuous residence and continuous 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 has not submitted sufficient 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 conclusion that the applicant had failed to establish 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.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. 244.9(b). The applicant claims to have lived in the United States since October 1995. It is reasonable to expect that the applicant would have been able to provide additional contemporaneous evidence to support her claim to continuous residence and continuous physical presence; however, no such evidence has been provided. The aforementioned affidavits submitted by the applicant in support of her application are lacking basic and necessary information or details and, as such, fall short of the requirements under 8 C.F.R. § 244.9.

The applicant has not submitted sufficient credible evidence to establish her continuous qualifying residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

Beyond the decision of the director, the applicant also has not submitted any evidence of her nationality or an identity document from her country of origin. Therefore, the applicant has not established her identity and nationality.

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.