



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 05 249 70773]

Office: California Service Center

Date: NOV 06 2007

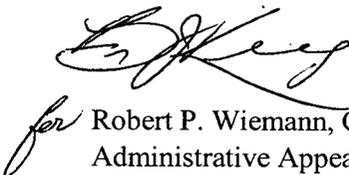
IN RE: Applicant: [REDACTED]

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 (AAO) on appeal. The appeal 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 record reveals that the applicant filed a late initial TPS application on June 6, 2005, under CIS receipt number WAC 05 249 70773. The Director, California Service Center denied the application on April 3, 2007, because the record established that the applicant had been convicted of a felony, and the applicant had also failed to submit evidence to establish eligibility for late initial registration for TPS, her continuous residence in the United States, and her continuous physical presence.

On August 1, 2006, the applicant was requested to submit evidence to establish her eligibility for TPS. With her response, the applicant submitted photocopies of:

1. Two pages of her El Salvador passport, including the biographic page;
2. A receipt, dated August 16, 2006, from the District Court of Denver County, Colorado;
3. A final court disposition from the District Court of Denver County, Colorado, showing a conviction on September 11, 1997, for possession of a controlled substance;
4. Three affidavits from individuals attesting to knowing the applicant;
5. U.S. Individual Income Tax Return, Form 1040, for the year 2005;
6. A medical laboratory report, dated in 2006;
7. Three utility invoices, 1 dated in 2004, and 2 dated in 2006;
8. An invoice, dated September 1, 2005, from Garden Grove Sanitary District; and,
9. An MCI invoice, dated March 17, 2005.

On appeal, the applicant states that she regrets having committed a crime, that she has been rehabilitated, and she has met the continuous residence and continuous physical presence requirements in the United States. With her appeal, the applicant submits photocopies of:

- 1) U.S. Individual Income Tax Return, Form 1040, for the year 2000;
- 2) A letter from Fr. [REDACTED] Associate Pastor, of the Catholic Church of the Holy Trinity, stating that he has known the applicant since 2002; and,
- 3) Some of the same evidence earlier provided.

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 as 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 section 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 conditions described in paragraph (f)(2) of this section.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on June 6, 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 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or 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 he or 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).

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act, and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

As noted by the director, the record contains a final court disposition which reveals the following:

On September 11, 1997, the District Court, Denver County, Colorado, convicted the applicant, on a guilty plea, of Charge 1: "Poss/Sale Sched. I or II Contrl'd Subst.," a felony. On February 23, 1998, the applicant was sentenced to 4 years jail, plus fines, and costs.

The applicant is ineligible for TPS due to her record of a felony conviction, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny TPS must be affirmed for this reason.

The next issue in this proceeding is whether the applicant is eligible for late initial registration for TPS.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for this reason must be affirmed.

The next issue in this proceeding is whether the applicant has established her continuous residence and her continuous physical presence in the United States.

The applicant has failed to submit sufficient evidence to establish the requisite continuous residence and continuous physical presence. It is noted that the evidence submitted consists primarily of tax returns and affidavits from individuals attesting to knowing the applicant. Neither the applicant's affidavit from the three individuals regarding the applicant's claimed presence in the United States since prior to January 2001, nor the letter from Fr. [REDACTED] are supported by sufficient corroborative evidence. For example, the applicant does not submit any corroborative evidence of her continuous residence in the United States since February 13, 2001, nor does she submit evidence of her continuous physical presence in the United States during the years 2001, 2002, or 2003. It is also noted that the tax returns are not accompanied by supporting documents, such as W-2, Wage and Tax Statements. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v). It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. It is reasonable to expect that the applicant would be able to submit additional corroborating evidence of her continuous residence and continuous physical presence, given that she claims that she has been in the United States since December 1991. The applicant has, therefore, failed to establish that she has met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is also noted that the record reveals that the applicant was denied asylum, was placed in Deportation Proceedings, and ordered deported, *in absentia*, to El Salvador, on January 27, 1997, by the Immigration Judge.

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.