



U.S. Citizenship
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Services

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FILE:  Office: VERMONT SERVICE CENTER
[EAC 07 18354556 Appeal]
[EAC 06 29873171 Application]

Date: FEB 01 2008

INRE: 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 Vermont Service Center. Any further inquiry must be made to that office.

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 on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is applying for 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 initial registration and that she had failed to submit court dispositions for her two arrests. The director also found that the applicant had not established that she had continuously resided in the United States since February 13, 2001 or that she had been continuously physically present in this country since March 9, 2001.

On appeal, the applicant states:

The applicant indicates that she did not respond to the director's Notice of Intent to Deny (NOID), because she was told not to do so because her application would be denied anyway. She states that her criminal record resulted from her lack of knowledge of the law, and that she now obeys the law, recognizes her mistakes, and now accepts her responsibilities. The applicant submits additional documentation and requests she be granted TPS.

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 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 parole; 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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her application with Citizenship and **Immigration** Services on July 25, 2006.

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

On December 13, 2006, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in the regulations at 8 C.F.R § 244.2(f)(2). The applicant was also requested to submit evidence establishing her continuous residence and continuous physical presence in the United States and court dispositions for her two arrests. The applicant did not respond to the director's request.

On appeal, the applicant submits evidence in an attempt to establish her 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 any evidence to establish that she has met any of the criteria for late registration described in the regulations at 8 C.F.R § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

The record contains the following documentation concerning her continuous residence and continuous physical presence during the required periods:

1. A copy of the applicant's "PEBES ONLINE RESPONSE" from the Compton California Social Security Administration Field Office dated June 9, 2006 showing that she had earnings posted to her account from 1999 through 2002.
2. A copy of an invoice from Luxury Furniture Plus in South Gate, California, for furniture the applicant purchased on November 10, 2000.
3. A copy of an invoice from Affordable Furniture in Southern California, for furniture the applicant purchased on December 5, 2000.
4. Copies of money orders the applicant purchased in Long Beach, California on December 1, 2000 and on January 6, 2001.
5. Copies of checks the applicant while she lived in Long Beach, California dated January 2, 2001, January 10, 2001, December 10, 2001, December 18, 2001 and January 4, 2002.
6. Copies of the applicant's IRS Form W-2, Wage and Tax Statements, for 2002 from four employers in California.
7. A copy of the applicant's IRS Form 1040, U.S. Individual **Income** Tax Return, for 2002.
8. A copy of the applicant's IRS Form 1040A, U.S. Individual Income Tax Return, for 2003.
9. Copies of the applicant's firm " " State of California Forms BOE-401-A, State, Local and District Sales and Use Tax Return, for the periods July 17, 2004 through September 30, 2004, October through December 2004, April 30, 2005 through March 2006, July 31, 2005 through June 2005, and October 31, 2005 through September 2005.
10. A copy of the applicant's IRS Form 1040EZ, U.S. Income Tax Return for Single and Joint Filers With No Dependents for 2005.
11. A copy of the applicant's California Department of Motor Vehicles **driver's** license/identification card information request dated June 29, 2006, showing she was issued an identification card on June 20, 2003 which expires on June 22, 2008.

It is determined that the applicant has provided convincing evidence to establish her continuous residence and continuous physical presence during the required time periods. 8 C.F.R. § 244.2 (b) and (c). Consequently, the director's decision is not affirmed for these two reasons.

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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1(3) define "felony" and "misdemeanor" as:

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.

The record shows that on November 13, 2001, in the Superior Court of California, County of Los Angeles, California, Case Number _ (arrest date October 8, 2001), the applicant was convicted of grand theft of property over \$400, a misdemeanor.

Although the record shows that she was also arrested on January 11, 2002, that arrest was for a probation violation stemming from her November 13, 2001 conviction. On April 15, 2002, her probation was reinstated and no conviction is shown to have resulted from her second arrest. The applicant has submitted a court disposition documenting her two arrests. Consequently, the applicant has overcome the director's determination concerning this ground for denial. Nevertheless, the applicant remains ineligible for TPS due to her late filing, as detailed above.

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 cited 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.