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U.S. Citizenship
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FILE:



Office: NEBRASKA SERVICE CENTER

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INRE:

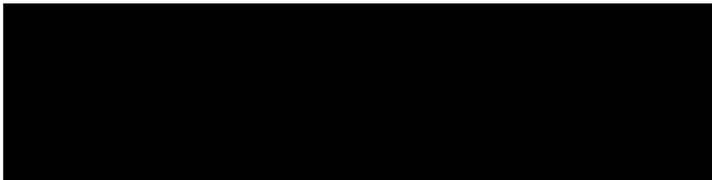
Applicant:



APPLICAnON:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The applicant is 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 determined that the applicant failed to establish she: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that she has lived in the United States since June 1991 and has provided all of the requested evidence. The applicant also submits evidence in an attempt to establish her continuous residence and physical presence in the United States during the qualifying period.

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, as defined in 8 C.P.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.

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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until March 9, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on August 16, 2004.

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). 8 C.P.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.P.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding 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 from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.P.R. § 244.2(f)(2) (listed above). If the **qualifying** condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the **qualifying** condition in order to be considered for the late initial registration. 8 C.P.R. § 244.2(g).

On December 16, 2004, the applicant was provided the opportunity 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 date of entry and continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant was also requested to submit evidence of her identity and nationality. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence in the United

States during the qualifying period. The applicant also submitted evidence of her identity. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that she has lived in the United States since June 1991. The applicant also submits evidence in an attempt to establish her continuous residence and physical presence in the United States during the qualifying period. CIS records indicate that the application had a removal proceeding, which was pending or subject to further review or appeal. Consequently, the director's conclusion that the applicant failed to establish her eligibility for late registration will be withdrawn.

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.

As stated above, the applicant was requested on December 16, 2004 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. A copy of the first page of a 1977 Form 8453, U.S. Individual Income Tax Declaration for Electronic Filing and a Form IT-8453, Indiana Individual Income Tax Declaration of Electronic Filing.
2. Copies of pay stubs from Hormel Foods Corporation for pay periods ending September 30, 2001, September 29, 2002, March 2, 2003 and January 25, 2004; a copy of a pay stub from an unidentified company for pay period ending October 28, 1994; and, copies of weekly earnings statements from John Morrell & Co. for pay periods ending August 1, 1998 through August 16, 1998.
3. A copy of a State of Alaska Marriage Certificate dated September 1, 1992 and a State of Alaska Birth Certificate indicating an October 5, 1992 date of birth.
4. Copies of Social Security cards, Employment Authorization cards, a State of California Identification Card issued on June 25, 1991, a State of Alaska Identification Card issued on February 2, 1992 and a Gigante Express card issued on November 1, 2001.
5. A copy of a Request for Employment Verification indicating the applicant's date of employment as March 31, 1999 and employment up to 2001.
6. A copy of a letter from [REDACTED] of All Saints Parish dated November 14, 1999.
7. Copies of CIS notices and the first page of the applicant's Form I-765, Application for Employment Authorization.
8. Copies of account statements from US West Communications dated December 28, 1998 and Dish Network February 18, 2001.

The director concluded that the applicant had submitted sufficient evidence to establish her entry into the United

States prior to February 13, 2001, but failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant submits:

9. Copies of United States Postal Service (USPS) receipts dated March 23, 1996, October 8, 1999, and April 14, 2000.
10. Copies of a pay stub dated October 16, 1999, and wage information printouts for weekly wages received from January 6, 2001 through March 5, 2001.
11. Copies of a State of Indiana Learner Permit issued August 6, 2001.
12. A copy of a hand-written generic receipt for TPS fees dated April 21, 2001.
13. A copy of a monthly statement from Northern Indiana Public Service Co., with a due date of March 1, 2001.

The USPS receipts and two of the pay stubs indicates the applicant was present in the United States prior to February 13, 2001. The wage information printouts, and billing statements from Dish Network and Northern Indiana Public Service Co., indicate the applicant was present in the United States subsequent to February 13, 2001.

Consequently, this basis of the director's decision will be withdrawn.

Therefore, the director's decision will be withdrawn and the application will be approved.

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained.