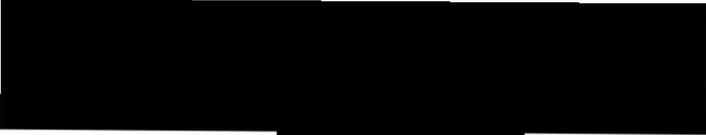


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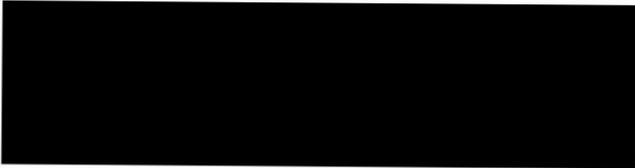
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn, and the re-registration application denied, by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office 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 withdrew the applicant's TPS because he found the applicant had failed to properly re-register by not responding to a Notice of Intent to Deny (NOID).

On appeal, the applicant asserts through counsel that she did not receive any NOID, and provides the evidence requested on appeal.

The regulation at 8 C.F.R. § 244.14 states:

- (a) Authority of the director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following:
 - (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;
 - (2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 244.15;
 - (3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

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.

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).

The record indicates the following charges:

1. On November 27, 2005, the applicant was arrested for Forcible Admission Without a Firearm, by the Bell Police Department, California.
2. On November 27, 2005, the applicant was arrested for Battery With Serious Bodily Injury, by the Bell Police Department, California.
3. On November 27, 2005, the applicant was arrested for Damage to a Wireless Communication Device, by the Bell Police Department, California.

On September 13, 2006, the director sent the applicant a Notice of Intent to Deny (NOID) requesting the final court disposition for charges appearing on the applicant's record, and gave the applicant thirty days to respond. The record does not indicate that the applicant responded. The director re-mailed the NOID on May 16, 2007, and gave the applicant additional time to respond, but the record does not indicate that the applicant responded.

On October 11, 2007, the director withdrew the applicant's TPS, denied the re-registration application, and mailed the notice to the same most recent address to which the NOID was mailed.

On November 9, 2007, the applicant filed an appeal and stated through counsel that she had not received the NOID, and was thus not given an opportunity to respond. She also provided evidence of the disposition for charges on her record revealing that she was convicted of a single misdemeanor (Battery, in violation of section 242 CA PC).

The AAO would note that it does not appear the applicant is ineligible for TPS due to criminal convictions, however, the AAO is not persuaded that the applicant failed to receive notice of the director's NOID. The NOID was sent to the same address as the denial and the applicant failed to respond. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying an application. 8 C.F.R. § 103.2(b)(14). Counsel claims that the applicant did not receive the NOID, and attempted to call CIS on several occasions, but failed to provide any evidence to support these assertions. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, the applicant failed to notify CIS of her change of address, establishing that her failure to receive the NOID was willful. In this case the director's decision was correct as a matter of law, as the applicant had failed to respond for over a year to the director's NOID. Nevertheless, the applicant has provided the requested evidence on appeal and the basis of the director's decision will be withdrawn.

Beyond the decision of the director, however, the applicant has failed to establish her national identity. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

Section 8 C.F.R. § 244.9 requires applicant's to submit all information requested in the instructions of the forms and as may be requested by CIS. It also provides that acceptable evidence of nationality are:

- (i) Passport;
- (ii) Birth Certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing a photo and/or fingerprint.

Evidence in the record indicates that the applicant's identity has not been sufficiently established. The AAO would note that the applicant has misspelled her name on several occasions, has given differing dates of birth, and has failed to provide an authentic birth certificate. In addition, the applicant's criminal record uses the name [REDACTED], and it cannot be determined which identity employed by the applicant is correct. The appeal will be denied on the additional basis that the applicant has failed to establish her identity.

The next issue in this matter is the applicant's failure to establish a qualifying residence and continuous presence during the required period.

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 Salvadorans was from March 9, 2001 through September 9, 2002. Subsequent extensions

of the TPS designation have been granted, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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.

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.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).

Upon examination of the record the AAO notes that the applicant has used several different spellings of her name, and at least one alias. It cannot be determined whether she provided a false name to the police when she was arrested in November of 2005, or whether she is using a false name in her applications to CIS. The record contains two documents resembling pay stubs and several letters provided by acquaintances of the applicant. Issues of identity aside, the pay stub documents do not contain the applicant's name, appear to have been altered, and were fabricated in such a manner as to raise serious doubts about their authenticity. Even in a light most favorable to the applicant, this evidence is not sufficient to establish a qualifying residence and continuous presence. Therefore, the application will be denied on this additional basis.

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.