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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: Texas Service Center Date: OCT 21 2004

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 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 had entered the United States on or before February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. The director also found that the applicant had failed to establish that she was eligible for TPS late registration.

On appeal, the applicant provides additional documentation in support of her eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;

(e) Is not ineligible under § 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.

The phrase *brief, casual, and innocent absence*, as defined in 8 C.F.R. § 244.1, 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 in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed her application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on November 18, 2002.

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).

On February 3, 2003, the applicant was requested to submit evidence establishing that she arrived in the United States prior to February 13, 2001, and that she had been continuous physically present in the United States from March 9, 2001, to the date of filing her application. The applicant was also requested to submit photo identification and evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2).

The applicant, in response, provided the following documentation:

1. A copy of her birth certificate along with an English translation.
2. A copy of her mother's Employment Authorization card valid from December 31, 2002 to September 9, 2003 indicating a category of "A12".
3. Copies of her elementary school grade reports from the years 2001 to 2003.
4. A letter dated February 14, 2002, from Ms. [redacted] of the Sky View Elementary School in Mableton, Georgia, who stated that the applicant and her brother are students at that school.
5. A letter dated February 22, 2003, from Ms [redacted] who stated that she was a babysitter for the applicant from January 2001 to August 2001.
6. Copies of the applicant's immunizations and medical records dated from August 13, 2001 to March 14, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish that she had been continuously physically present in the United States since March 9, 2001, and that she was eligible for late registration. On May 15, 2003, the director denied the application. On appeal, the applicant submits additional documentation:

7. A copy of her mother's Employment Authorization card and Social Security card.
8. A church letter date May 25, 2003, from Reverend [redacted] Pastor of the Hispanic Baptist Church in Lawrenceville, Georgia, who stated that the applicant and her brother have been active in his church for a period of four years.
9. A copy of her personal identification card bearing an expiration date of February 28, 2006.

The first issue in this proceeding is 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 letter from Ms. [redacted] as detailed in No. 5 above, is not supported by corroborative evidence. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these statements; however, no such evidence has been provided. The letter from Reverend Richardo

Fachisters as detailed in No. 8 above, has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

Further, the documentation as detailed in Nos. 3, 4, and 6, post-date the requisite time periods for continuous residence and physical presence by five months. The applicant has not submitted sufficient credible evidence to establish her qualifying residence in the United States since February 13, 2001, or her 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 be affirmed.

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

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).

The applicant asserts, on appeal, that she is eligible for late registration because her mother is eligible to be a TPS registrant. To establish this claim of eligibility for late registration, the applicant must fully satisfy the requirements of 8 C.F.R. § 244.2(f)(2)(iv) by providing evidence that her mother was eligible to be a TPS registrant, and evidence that the applicant was a "child" during the initial registration period.

The record contains a copy of the applicant's birth certificate indicating that at the time she filed her application she was 12 years of age. The applicant also provided a copy of her birth certificate indicating that Ms. [redacted] s her mother. Further, the applicant provided a copy of her mother's Employment Authorization card reflecting that she was eligible to be a TPS registrant; and a check of the CIS' computer systems reflect that her mother's TPS application was approved on May 30, 2002.

The applicant has established that she has met the requirements for late registration under 8 C.F.R. § 244.2(f)(2)(iv). However, in addition to meeting the criteria for late registration, the applicant must also establish her qualifying residence and physical presence in the United States. As stated previously, she has not met the residence and continuous physical presence eligibility requirements for TPS. Therefore, the director's decision to deny the application for TPS late registration will also be affirmed.

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.