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20 Mass, Rm. A3042, 425 I Street, N.W.
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: Nebraska Service Center
[LIN 03 259 51964]

Date: MAY 12 2005

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, Nebraska 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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish she was eligible for late registration. The director also found that the applicant had failed to establish she had entered the United States prior to February 13, 2001; maintained residence in the United States since February 13, 2001; and maintained physical presence in the United States since March 9, 2001 to the date of filing her application.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS [LIN 02 011 50292] on September 28, 2001, during the initial registration period. That application was denied on July 27, 2002. The applicant did not file either a motion or an appeal for this application during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, along with her Form I-765, Application for Employment Authorization, on October 30, 2002. On January 25, 2003, the director found the applicant ineligible for employment authorization since her previous (initial) application for TPS was denied. On March 10, 2003, the applicant filed a motion to reopen the director's decision to deny her employment authorization. The director found that the applicant's motion was untimely and, therefore, rejected the motion on August 25, 2003.

The applicant filed a third Form I-821, Application for Temporary Protected Status, on August 28, 2003. The director denied this third application [LIN 03 259 51964] because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. The director also found that the applicant had failed to establish she had entered the United States prior to February 13, 2001; maintained residence in the United States since February 13, 2001; and maintained physical presence in the United States since March 9, 2001 to the date of filing her application.

The applicant's initial Form I-821 was properly filed on September 28, 2001. That initial application was denied by the director on July 27, 2002. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on August 28, 2003. Since the initial application was denied on July 27, 2002, the instant application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 September 9, 2006, upon the applicant's re-registration during the requisite time period.

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).

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

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).

On September 23, 2003, the applicant was requested 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 continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant, in response, provided some evidence in an attempt to establish her continuous residence and continuous physical presence in the United States during the qualifying periods; however, she did not submit any evidence to establish her eligibility for TPS late registration. The director determined that the applicant had failed to establish she was eligible for late registration. The director also determined that the applicant failed to establish that she entered the United States prior to February 13, 2001, maintained a residence in the United States since February 13, 2001, and had maintained continuous physical presence in the United States since March 9, 2001, to the date of filing her application. Therefore, the director denied the application on November 13, 2003.

On appeal, the applicant submitted evidence in an attempt to establish her qualifying 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 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on September 23, 2003 to submit evidence establishing her qualifying residence and physical presence in the United States. The applicant, in response, provided the following documentation:

1. An undated employment letter from [REDACTED] owner of Tienda Salvadorena, who stated that the applicant had been her employee since January 2001.
2. A copy of an immunization record for her daughter, [REDACTED]
3. A copy of her daughter's birth certificate indicating her date of birth as October 19, 2000.
4. Copies of her passport with an admission stamp bearing her date of entry into the United States on April 21, 1999.
5. A copy of her Form I-94, Departure Record, bearing an entry stamp dated April 21, 1999.
6. Copies of Medical Authorization Cards for [REDACTED] bearing effective dates of September 7, 2000 to October 5, 2000, and December 1, 2000 to December 31, 2000.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on November 13, 2003. On appeal, the applicant reasserted her claim and submitted the following documentation:

7. A copy of an undated prescription written in Aurora, Colorado.
8. A copy of a medical card from the State of Colorado, issued to [REDACTED] on March 21, 2000.
9. Copies of Medicaid Authorization Cards for [REDACTED] and [REDACTED] bearing effective dates of April 1, 2001, May 1, 2001, and June 1, 2001.
10. A copy of a MoneyGram dated February 21, 2001.
11. Copies of medical records from the MDPN Elmira Clinic dated January 2, 2001, March 5, 2001, and March 9, 2001, for [REDACTED] and [REDACTED].
12. A copy of a telephone triage medical report dated December 10, 2001 for [REDACTED].

The employment letter from [REDACTED] as detailed in No. 1 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)(i). Specifically, the letter is not in affidavit form, nor does it provide the address where the applicant resided during the period of her employment. It is also noted that the record of proceedings contains an affidavit dated September 23, 2001, from [REDACTED] stated in the affidavit that she has known the applicant since the fall of 1999, and that the applicant has worked for her "at various times through the years in many different aspects of my home." However, [REDACTED] did not state in the September 23, 2001 affidavit that the applicant was employed in her business, therefore, the new letter from [REDACTED] stating that the applicant has been employed as a cashier and manager at Tienda Salvadorena since January 2001 is lacking in credibility.

In addition, the applicant had provided copies of Colorado State Medical Authorization Cards, as detailed in Nos. 6, 8, and 9 above, bearing the name of [REDACTED]. The record of proceedings also contains a court order from the Arapahoe County Court in Aurora, Colorado reflecting that the name of [REDACTED] was changed to [REDACTED] on October 19, 2001. However, the evidence as listed above in Nos. 6, 8, and 9 pre-date the court order.

The medical records as detailed in No. 11 above indicate the name of [REDACTED] as parents of [REDACTED] the applicant's claimed daughter. The applicant, however, has provided no credible evidence to establish the legal use of [REDACTED] as well. It is worth noting that the applicant claimed that she is "single" on her application for TPS.

The copy of the admission stamp in her passport and on her Form I-94, Departure Card, shows that the applicant had entered the United States prior to February 13, 2001; however, the applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001. The applicant 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 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.