



U.S. Citizenship
and Immigration
Services

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FEB 28 2007

FILE:



OFFICE: California Service Center

DATE:

[WAC 05 252 70422]

IN RE:

Applicant:



APPLICATION:

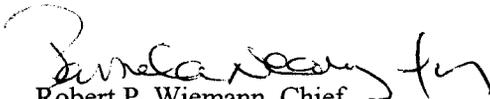
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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 on the grounds that the record failed to establish that the applicant was continuously resident and physically present in the United States for the required periods of time, or that she is eligible for late registration.

On appeal, the applicant asserts that she meets the continuous residence and physical presence requirements of the Act, and that she previously explained the reason for her late filing.

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 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.

- (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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with Citizenship and Immigration Services (CIS) on June 9, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she satisfied at least one of the criteria enumerated in 8 C.F.R. § 244.2(f)(2) above.

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. *See* 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. *See* 8 C.F.R. § 244.9(b).

On May 4, 2006, 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), her date of entry into the United States, her nationality/identity, as well as her continuous residence in the United States since February 13, 2001 and continuous physical presence in the United States since March 9, 2001. In response the applicant, who claims to have entered the United States without inspection in October 2000, submitted a photocopy of her El Salvadoran passport and explained that her late filing was due to her inability to obtain a birth certificate in El Salvador. The applicant also referred to previously submitted letters from acquaintances in the United States as evidence of her continuous physical presence in the country since March 9, 2001.

In a Notice of Decision issued on July 18, 2006, the director determined that the evidence submitted by the applicant failed to establish that she met the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador or that she is eligible for late registration.

On appeal the applicant reiterates her claim to have submitted the requisite evidence to establish her continuous physical presence in the United States and eligibility for late filing. The applicant also claims that “the Service approved my Form[s] I-821 and I-765.”

The only evidence of the applicant’s presence in the United States since 2001 are three letters from acquaintances, all dated in February 2005, that were submitted with the TPS application. Two of the authors state that they have known the applicant for three years and five years, respectively, but they provide no further details as to how they met the applicant, the nature of their interaction over the years, what the applicant has been doing in the United States, and where she has been living. The third letter is from an individual who states that the applicant has worked for her since February 11, 2001, at a certain address in Pomona, California. The author does not describe the nature of the work, however, or provide any further information about the applicant such as where she has been living since February 2001 and what else she has been doing in the United States. The AAO determines that the foregoing letters do not meet the evidentiary standard set forth in 8 C.F.R. § 244.9(a)(2) to demonstrate the applicant’s continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001. Based on the foregoing analysis, the AAO concludes that the evidence of record fails to establish that the applicant meets the continuous residence and continuous physical presence requirements for TPS.

Nor does the record include any evidence to establish that the applicant meets any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The director's decision to deny the application for TPS will be affirmed.

The applicant’s claim on appeal that her Form I-765 (Application for Employment Authorization) was approved appears to be correct, insofar as the form includes a penned notation that it was approved on March 24, 2006. However, the claim that her Form I-821 (Application for Temporary Protected Status) was also approved is not correct. Furthermore, in the Notice of Decision denying the Form I-821 on July 18, 2006, the director stated that “any previously issued employment authorization will expire upon receipt of this Denial Notice or on the date of expiration stated on your Employment Authorization Document, whichever is later in time.”

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.