



U.S. Citizenship
and Immigration
Services

ML

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 06 2007

[WAC 05 225 72324 as it relates to SRC 01 228 66608]

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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the District Director, Houston, Texas. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The case will be *sua sponte* reopened, the applications will be approved, and 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 applicant filed an initial application for TPS under receipt number SRC 01 228 66608 which was denied by the District Director, Houston, Texas, on December 17, 2003, because the applicant had abandoned her application by failing to respond to a Notice of Intent to Deny (NOID) requesting her to provide evidence that she had resided in the United States prior to February 13, 2001, and that she had been physically present in the United States since March 9, 2001.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 13, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

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 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.

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. The Secretary of the Department of Homeland Security has granted subsequent extensions with the latest extension valid until September 9, 2007, 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 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).

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated February 9, 1998 indicating that the United States Border Patrol apprehended the applicant after she illegally entered the United States by swimming across the Rio Grande River on or about February 6, 1998. Additionally, prior to the issuance of the NOID, the record contained a copy of the applicant's Texas Department of Public Safety Under 21 Identification Card showing her date of birth as May 11, 1979. Although the document does not show an issue date, it was issued before her 21st birthday which would have occurred on May 11, 2000. Other evidence of her continuous residence and continuous physical presence during the prescribed period includes pay stubs documenting her employment in the United States since 1999. Therefore, it is determined that the applicant has satisfied the continuous residence and continuous physical presence requirements and all other eligibility requirements for TPS, and the application is approved.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

An alien applying for temporary protected status has the burden of proving that he or she meets the above requirements and is eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The appeal is sustained. The initial application is reopened and the director's denial of this application is withdrawn. The initial application and the re-registration application are both approved.