



U.S. Citizenship
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Services

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ML

[REDACTED]

FILE: [REDACTED]
[EAC 07 005 71499]

Office: VERMONT SERVICE CENTER

Date: NOV 05 2007

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:

[REDACTED]

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 Director, Vermont Service Center (VSC), denied the application. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of El Salvador who seeks 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 was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States. Finally, the director found that the applicant had failed to submit an identity document bearing her photograph.

On appeal, counsel for the applicant asserts that the applicant has provided sufficient evidence to demonstrate that she is eligible for TPS and submits no additional documentation.

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 as designated by the Attorney General is eligible for temporary protected status 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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.

Persons applying for TPS offered to Salvadorans 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 Salvadorans was from March 9, 2001, through September 9, 2002. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of Homeland Security, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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 reflects that the applicant filed an initial TPS application on October 5, 2006 – four years after the close of the initial registration period for Salvadoran. The director accepted the application under the late filing provision in 8 C.F.R. § 244.2(f)(2). In support of her application, the applicant submitted a copy of an Employment Authorization Document (EAD), valid from July 6, 2005, through July 5, 2006, obtained in connection with her husband's asylum application.

On March 2, 2007, the director requested that the applicant submit evidence to establish eligibility for late registration and to establish her qualifying continuous residence and physical presence. The director also requested that the applicant submit a photocopy of a photo identity document. The director noted that the applicant indicated on her application that she last entered the United States on January 15, 2001, but that the record reflected that she entered the United States on January 15, 2002.

In response to the director's request, counsel for the applicant explained that the January 15, 2002, entry date was a typographical error and that the applicant entered the United States on January 15, 2001. The applicant submitted a copy of an asylum application she filed with the Immigration Judge (IJ) on June 2, 2006 and an order from the IJ. The order indicates that, on September 11, 2006, the applicant withdrew her applications for asylum, withholding of removal, and, cancellation of removal. The order also indicates that the IJ administratively closed the applicant's removal proceedings.

On September 4, 2006, the director denied that application for failure to establish eligibility for late registration, for failure to establish qualifying continuous residence and continuous physical presence, and, for failure to submit a photo identity document.

On appeal, counsel asserts that the applicant has provided sufficient evidence to demonstrate her eligibility for TPS and submits no additional evidence.

None of the documentation submitted by the applicant overcomes the applicant's failure to file her TPS application within the initial registration period. The applicant is not eligible for late registration under 8 C.F.R. § 244.2(f)(ii), as she did not have an application for asylum, voluntary departure, or any relief from removal pending or subject to further review or appeal during the initial registration period. The record reflects that the applicant was not added to her husband's asylum application until June 9, 2003, and did not file her own asylum application until June 2, 2006. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground will be affirmed.

Furthermore, the applicant has not submitted sufficient credible 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 never submitted documentation to show that she was residing and physically present in the United States for the required time periods. The earliest record of the applicant's presence in the United States is her marriage certificate dated March 7, 2003. 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.

Finally, the applicant has not submitted a photo identity document establishing her Salvadoran nationality. 8 C.F.R. § 244.2(a). The director's decision to deny the application on this ground will also be affirmed.

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 cited 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.