



U.S. Citizenship
and Immigration
Services

PUBLIC COpy
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



M1

FILE:



Office: VERMONT SERVICE CENTER

Date: MAY 12 2008

[EAC 07 082 70373]

[EAC 07 203 51099 CONSOLIDATED]

[EAC 07 08270374 CONSOLIDATED]

INRE:

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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. 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 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 during the requisite periods.

On appeal, the applicant asserts that she was the beneficiary on her father's pending asylum application. The applicant also submits additional documentation in support of her appeal.

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 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.

Persons applying for TPS offered to EI 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 designation of TPS for EI Salvadorans has been extended several times, with the latest extension valid until March 9, 2009, 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for EI Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on December 19, 2006. To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On March 9, 2007, 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 qualifying continuous residence and continuous physical presence in the United States. The

applicant, in response, submitted a copy of her father's Form 1-589, Request for Asylum in the United States, signed on September 15, 1988. The applicant is included as the applicant's child living in El Salvador in block 22 of the form.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on June 18, 2007.

On appeal, the applicant asserts that she was a beneficiary on her father's asylum application that was pending during the initial registration period. A review of the record of the applicant's father reveals that he filed a Form 1-589 on October 17, 1988, and included the applicant as his child then living in El Salvador. The record reflects that the applicant's father updated the Form 1-589 on May 23, 2007, to indicate that his children, including the applicant, were now living in the United States. The record does not reflect that a final decision has been made on the applicant's father's application.

Accordingly, as the applicant was a beneficiary on her father's asylum application, which is currently pending decision, and was pending decision during the initial registration period, she has met the requirements of 8 C.F.R. § 244.2(f)(2)(ii), and is eligible for late registration. Therefore, the director's decision denying the application on this ground is withdrawn.

The second 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 applicant initially submitted the following documentation in an effort to establish continuous residence and continuous presence in the United States during the requisite period:

1. A copy of a Los Angeles Unified School District pupil Accounting Report dated May 3, 1996, showing the applicant as a student with an address in North Hills and a transfer to North Carolina on April 30, 1996.
2. Copies of report cards from Broadview Middle School, showing the applicant's enrollment for the periods October 2000 through January 2001, and March to June 2001; and October through December 2001, and March through May 2002. The report cards are addressed to the applicant's parents in Burlington, North Carolina.
3. A copy of a May 28, 2002, "Good Citizenship Award" presented to the applicant from the Broadview Middle School.
4. A copy of a Cummings High School for the applicant for the 2005-2006 school year. A copy of another card submitted by the applicant is illegible.

As stated above, the applicant was requested on June 18, 2007, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following documentation:

5. A copy of a March 8, 1996, letter from Mission City Community Network, Inc., in North Hills, California confirming that the applicant was a patient at the clinic in 1994. The applicant also submitted a copy of an immunization record from the organization, indicating that she received a tuberculosis test on January 12, 1994.
6. Copies of a November 1, 1996, and an April 11, 1997, certificate issued to the applicant by the Haw Elementary School.
7. A copy of a school transcript from Cummings High School in Burlington, North Carolina, indicating that the applicant was a student at the school from March 2002 until her graduation on June 7, 2006.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on June 18, 2007.

On appeal, the applicant reasserts her claim and submits the following additional documentation:

8. A May 25, 2007, letter from Broadview Middle School in Burlington, verifying that the applicant was a student at the school from April 2000 to June 30, 2002.
9. A May 28, 2007, letter from [REDACTED], a teacher at Broadview Middle School, in which she stated that the applicant was her student for the 2001-2002 school year.
10. An undated letter from [REDACTED], a teacher at Hugh M. Cummings High School, in which he verified that the applicant was a full-time student at the school from August 2002 to her graduation in June 2006, and that he taught her in science.
11. An undated letter from [REDACTED], a teacher at Hugh M. Cummings High School, in which he verified that the applicant was a full-time student at the school from August 2002 to her graduation in June 2006, and that he taught her in physical education.
12. A copy of her June 2006 diploma from Hugh M. Cummings High School in Burlington, North Carolina.

The applicant also submitted copies of previously submitted documentation, including copies of more legible copies of her school identification cards for the school years 2004-2005 and 2005-2006.

The applicant has submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since

March 9, 2001. She has, therefore, 'credibly established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

Therefore, the director's decision will be withdrawn and the application will be approved.

An alien applying for temporary protected status 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. Here, the applicant has met this burden.

ORDER: The appeal is sustained.