

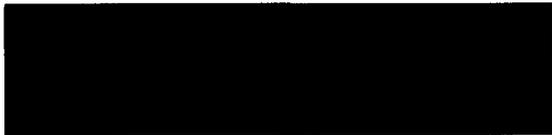
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U.S. Citizenship
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Services

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FILE:



[LIN 03 176 50461]

Office: NEBRASKA SERVICE CENTER

Date: JUL 01 2005

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, 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 determined that the applicant failed to establish she: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director also determined that the applicant failed to establish her nationality and identity. The director, therefore, denied the application.

On appeal, the applicant submits additional evidence in an attempt to establish her nationality and identity and evidence to establish her continuous residence and continuous physical presence in the United States during the qualifying period.

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 term *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 term *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 entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. 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 the Department of Homeland Security, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed her initial application on May 5, 2003.

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 record of proceeding confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On August 4, 2003, the applicant was provided the opportunity 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 nationality and identity, her continuous residence in the United States since February 13, 2001

and her continuous physical presence in the United States from March 9, 2001 to the date of filing the application. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. The applicant also submitted an identification card and a personal letter in an attempt to establish her nationality and identity. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant submits a copy of her birth certificate with English translation. The applicant also resubmits evidence in an attempt to establish her continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file her TPS application 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).

The second and third issues in this proceeding are 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.

As stated above, the applicant was requested on August 4, 2003 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted a statement from [REDACTED] who claims that he has known the applicant for five years. The applicant also submitted a personal letter stating that she lost her Salvadoran National Identification Card [REDACTED] when she went to have her fingerprints taken.

The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application. The director also noted that the applicant did not lose her [REDACTED] but it was taken from her as a suspected counterfeit document. The director, therefore, determined that the applicant had also failed to establish her identity and nationality. On appeal, the applicant submits:

1. A copy of a birth certificate with English translation.
2. Letters from [REDACTED] and [REDACTED]
3. A copy of a certificate of attendance for a class from September 1997 to December 1997.
4. Copies of an undated bill from [REDACTED] and a bill from an unidentified creditor for medical services dated October 13, 2000.
5. Copies of Rehab/Referral Treatment Plans, a Multiple-Set Training Diary, a Physical Therapy Discharge Statement from Center for Sports Medicine and Rehabilitation, Northfield, Minnesota dated July 31, 2000 and August 9, 2000, August 25, 2000 and September 1, 2000, respectively. Treatment /Progress Notes indicating activity on August 9, 2000, August 15, 2000, August 23, 2000, August 28, 2000 and September 1, 2000.

The applicant also resubmitted evidence previously provided.

The birth certificate alone does not establish the applicant's identity and nationality. As the director stated, the

fact that CIS took a suspected counterfeit [REDACTED] from the applicant casts doubt on the applicant's nationality and identity. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In her statement, Ms. [REDACTED] Director of the Hispanic Choir [REDACTED] Northfield, Minnesota, states that the applicant has been a member of the choir from April 1996 to the present. Ms. [REDACTED] [REDACTED] City of Northfield, Minnesota, states that she has seen the applicant in her office from time to time beginning on June 17, 2002, and her most recent contact with the applicant was on August 20, 2003. Ms. [REDACTED], Site Coordinator [REDACTED] Northfield, Minnesota states that the accompanying certificate shows the number of hours the applicant attended the English as a Second Language class from September 1997 to December 1997. Ms. [REDACTED] statement is not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. The statement from Ms. [REDACTED] is also of little probative value because she can only attest to seeing the applicant for the first time on June 17, 2002, subsequent to the qualifying dates to establish continuous residence and continuous physical presence. Ms. [REDACTED] can only attest to the applicant's presence from September 1977, therefore neither Ms. [REDACTED] nor Ms. [REDACTED] can assist in establishing the applicant's continuous residence and/or continuous physical presence in the United States during the qualifying period.

Similarly, the remaining evidence only indicates the applicant's presence in the United States prior to the qualifying dates to establish continuous residence and continuous physical presence in the United States. Consequently, this evidence is also of little or no probative value.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the periods from February 13, 2001 and March 9, 2001 respectively. Furthermore, the applicant has failed to establish her nationality and identity. 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 temporary protected status on this ground will also be affirmed.

ORDER: The appeal is dismissed.