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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: [Redacted]
[LIN 04 018 50464]

Office: NEBRASKA SERVICE CENTER

Date: JUL 29 2005

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 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 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement and additional evidence.

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 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 § 244.3;
- (e) Is not ineligible under § 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. A subsequent extension of the TPS designation has been granted, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The record reveals that the applicant filed a prior Form I-821, Application for Temporary Protected Status, on April 6, 2001, under CIS registration number LI [REDACTED]. The service center director determined that the applicant had abandoned her application because she failed to appear to be fingerprinted or to request that her fingerprint appointment be rescheduled. The director, therefore, denied that application on November 20, 2001.

The applicant filed a Form I-765, Application for Employment Authorization, on November 6, 2002, seeking extension of her employment authorization. The service center director denied that application on January 23,

2003, because the applicant's prior Form I-821 had been denied and she was no longer eligible for employment authorization. The applicant filed the current application with Citizenship and Immigration Services (CIS) on October 22, 2003.

The burden of proof is upon the applicant to establish that she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant has submitted a photocopy of her Salvadoran passport with a United States nonimmigrant B-2 visitor's visa and a stamp from the Immigration and Naturalization Service (now Customs and Border Protection) indicating that she was admitted to the United States as a nonimmigrant B-2 visitor on May 6, 1995, with stay authorized to November 6, 1995. She has also provided substantial evidence establishing her residence in the United States from 1995 through 2000. This evidence will not be listed in detail since it pertains to the applicant's residence and physical presence in the United States prior to the requisite dates.

She has previously submitted the following evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods:

1. Toyota billing statements dated December 20, 2001, with a payment due date of January 7, 2001; August 22, 2001, with a payment due date of September 7, 2001; and, June 23, 2003, with a payment due date of July 7, 2003;
2. a Utah Certificate of Title that was issued on September 8, 1998, with a lien release signed by a representative of Toyota Motor Credit Corporation on July 21, 2003, indicating that the applicant had paid off her car loan;
3. a Form I-797D notice dated June 23, 2001, that accompanied an Employment Authorization Card mailed to the applicant in connection with a pending TPS application;
4. a Form I-797C notice acknowledging receipt of the applicant's Form I-765, Application for Employment Authorization, at the Nebraska Service Center on November 6, 2002 under CIS receipt number LIN [REDACTED] and a Notice of Denial dated January 23, 2003, denying the applicant's Form I-765 because her prior Form I-821 filed on April 6, 2001, had been denied on November 29, 2001, and she was no longer eligible for employment authorization;
5. a photocopy of an Employment Authorization Card valid from June 22, 2001 to September 9, 2002, indicating that the applicant had a pending TPS application.

In addition, the record contains a letter from the applicant dated January 29, 2003, stating that she never received the Notice of Decision denying her prior application, and she didn't understand why her prior Form I-821 had been denied.

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant states that she is submitting additional evidence to establish her qualifying continuous residence and continuous physical presence. She submits an official high school transcript reflecting her presence and residence in the United States from 1996 through 1999; her Salvadoran passport; a receipt dated March 18, 2004 from the Utah Department of Public Safety - Driver License Division; and, a note indicating that she is applying for copies of her federal income tax return records from the Internal Revenue Service and would be submitting copies of tax records as soon as she received them.

To date, the applicant has not submitted a copy of her federal income tax records from 2000 through 2003. Nevertheless, the record contains sufficient evidence to establish the applicant's 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, met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the applicant has overcome this ground for denial of the application.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings 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, she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

As stated above, the applicant was requested on November 28, 2003, 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 entry into the United States prior to February 13, 2001, and evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, provided documentation relating to her residence and physical presence in the United States.

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

On appeal, the applicant has not submitted a statement or 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). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

Beyond the decision of the director, the record indicates that the applicant was arrested in Farmington, Utah, on August 13, 1999, and charged with misdemeanor theft in violation of section 2321. The applicant has not provided the final court disposition of this arrest.

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. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.