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U.S. Citizenship
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Services

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MM



FILE:

[REDACTED]
[LIN 03 127 50855]

Office: Nebraska Service Center

Date: JUN 24 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:



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 (AAO) 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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant had failed to establish her eligibility for late TPS 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 time periods.

The record reveals that the applicant filed her initial application [LIN 01 159 50604] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on April 4, 2001. That application was denied for abandonment on March 15, 2002, for failure to respond to a request for evidence to establish her eligibility for TPS. Counsel, on behalf of the applicant, filed a motion to reopen the application on April 15, 2002. The director dismissed the motion on August 5, 2002.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on March 6, 2003. The director denied this second application [LIN 03 127 50855] on May 2, 2003, because the applicant failed to establish her eligibility for TPS late registration. The director also denied the application because the applicant failed to provide evidence of her continuous residence and continuous physical presence during the requisite time periods.

On appeal, the applicant submits evidence in support of her eligibility for TPS.

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 designated by the Attorney General is eligible for TPS 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.

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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present since March 9, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid 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 reveals that the applicant filed her application with Citizenship and Immigration Services (CIS), on March 6, 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 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).

On March 27, 2003, 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 continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. In addition, the applicant was requested to submit photo identification. In response, the applicant provided some evidence of her qualifying continuous residence and continuous physical presence in the United States; however, she did not submit any evidence to establish her eligibility for late registration. The director determined that the applicant had failed to establish she was eligible for late registration. The director also determined that the applicant failed to provide evidence of residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. The director, therefore, denied the application on May 2, 2003. The director noted in his decision that the applicant had provided sufficient evidence to establish her identity and nationality.

On appeal, the applicant submits the following documentation in support of her eligibility for TPS: a letter from [REDACTED] who stated that the applicant has been living with him since January 2000; a copy of [REDACTED]'s State of Colorado Identification Card; copies of the applicant's Employment Authorization card, State of Colorado Identification card, and El Salvadoran personal identification card; copies of the English translation of the applicant's birth certificate; copies of State of Colorado Medicaid Authorization Cards bearing the name of the applicant and effective dates of May 1, 2000, and January 1, 2001; a copy of her daughter's Newborn Identification dated November 24, 2000; a copy of her medical billing statement dated November 22, 2000, from the San Juan People's Clinic; a copy of her daughter's birth certificate; a letter dated February 27, 2003, from [REDACTED] Operations Manager of the University of Colorado, who stated that the applicant had been an employee of the University of Colorado for the past three years; a copy of her Employee Timecard Report reflecting her pay from March 1, 2001 through June 2, 2001; an employer letter dated May 9, 2003, from [REDACTED] Placement Consultant of Westaff, who stated that the applicant worked for her company from March 1, 2001 to May 8, 2001.

The first 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. A review of the evidence submitted by the applicant establishes the applicant had entered the United States prior to February 13, 2001, and that she has continuously resided in the United States since that time. The applicant has also established that she has been continuously physically present in the United States since March 9, 2001.

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, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and he or 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).

On appeal, the applicant submits evidence to establish her continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Application for Temporary Protected Status 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). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

An alien applying for TPS 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.