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FILE: 
[EAC 01 200 51293]

Office: VERMONT SERVICE CENTER
Consolidated]

Date: NOV 02 2005

IN RE: Applicant:



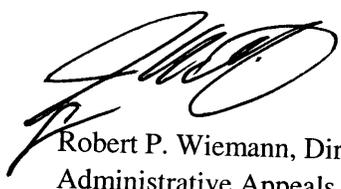
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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, reopened, and denied again by the Director, Vermont Service Center (VSC), and 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 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 provide final court dispositions concerning her criminal history.

On appeal, counsel for the applicant submits a brief statement. Counsel indicates that she is sending a brief and/or evidence to the AAO within 30 days of filing the appeal. To date, no additional documentation has been received; therefore, the record is considered complete.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant 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 § 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 parole; 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 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. 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, with the latest valid until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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 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 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).

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The applicant filed her initial Form I-821, Application for Temporary Protected Status, on May 18, 2001. The applicant indicated on her Form I-821 that she was single; was born in Nueva Trinidad, Chalatenango, El Salvador, on September 17, 1966; is a citizen of El Salvador; had last entered the United States without inspection at Houston, Texas, on August 17, 2000; had never been under immigration proceedings; had never previously used a Social Security number; and, had never been arrested. In support of the application, the applicant submitted the following documentation:

1. An affidavit, dated May 12, 2001, from her aunt, [REDACTED] stating that the applicant was born in Chalatenango, El Salvador, on September 17, 1966; and,
2. Photocopies of earnings statements issued to the applicant by various employers, dated September 2000 to April 2001.

At the time of filing the application, the applicant listed her address as [REDACTED] Suitland, Maryland, 20746. On December 21, 2001, the director requested the applicant to appear for fingerprinting, required in connection with her application. The notice to appear was mailed to the applicant at the address indicated on her Form I-821. The applicant failed to appear as requested.

If an individual requested to appear for fingerprinting does not appear, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The director denied the application on July 2, 2002, due to abandonment because the applicant failed to appear for fingerprinting. The denial notice was also forwarded to the applicant at the address indicated on her Form I-821. Since the application was denied due to abandonment there was no appeal available. However, the applicant could have filed a request for a motion to reopen within 30 days from the date of the director's denial.

The applicant attempted to file a motion to reopen her case on July 13, 2002. In support of the motion, the applicant submitted a letter and affidavits from acquaintances claiming that she never received the director's request to appear for fingerprinting at the address indicated. The applicant also submitted a notification, dated July 9, 2002, that her address had changed to [REDACTED] Suitland, Maryland, 20746, effective as of the date of the letter.

The applicant's motion was returned to her on July 30, 2002, because she had attempted to file the motion with a post-dated check. On August 9, 2002, the applicant resubmitted the motion to the VSC with a current dated check. Although the motion was not properly filed within the time allotted, the director reopened the proceedings and re-requested the applicant to appear for fingerprinting on April 1, 2003. The applicant appeared as requested.

As a result of being fingerprinted, CIS received a report indicating that the applicant had been arrested on July 26, 2000, and charged with one count of "misuse passport" and one count of "falsely making, forging, counterfeiting, mutilating or altering a passport of instrument for which imprisonment is at least 1 year."

On July 29, 2003, the director requested the applicant to submit final court dispositions of any charges against her. The applicant failed to respond to the director's request.

The director determined that the applicant had failed to submit any documentation concerning her criminal history and denied the application on January 8, 2004.

On appeal, counsel states that the applicant attempted to enter the United States in 2000 using a different identity, but was returned to her country immediately and is not aware of any criminal procedures or convictions against her. No additional evidence has been submitted in support of the appeal.

The applicant is ineligible for Temporary Protected Status because of her failure to provide evidence necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application for Temporary Protected Status will be affirmed.

It is noted that, on June 4, 2004, CIS records relating to the applicant were consolidated. A review those records reflects that the applicant was apprehended, on July 27, 2000, upon arrival at the Los Angeles International Airport, attempting to enter the United States from Mexico with a photo-substituted passport in the name of [REDACTED]. At that time, the applicant provided a sworn statement to CIS officials that she was a native and citizen of Guatemala, born on March 27, 1966, in Guatemala City, Guatemala, and that she resided in [REDACTED] Guatemala City. She further indicated that her father was Guatemalan, and that her deceased mother was from El Salvador. The applicant was determined to be inadmissible to the United States and was removed to Mexico that day. At the time of her removal, the applicant was advised that she was prohibited from entering, attempting to enter, or being in the United States for a period of five years from the date of her removal.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2(a), provide that an applicant is eligible for temporary protected status only if such alien establishes that he or she:

Is a national of a foreign state designated under section 244(b) of the Act;....

In this case, the nationality the applicant claimed at the time she was placed in removal proceedings was that of Guatemala. Guatemala is not a designated foreign state under Section 244 of the Act. It was not until May 18, 2001, after the Attorney General had designated El Salvador for TPS, that the applicant claimed to be a national of El Salvador.

Furthermore, there are discrepancies noted in the documentation submitted concerning the applicant's claim of having continuously resided, and been continuously physically present in the United States during the requisite time periods. At the time of filing her TPS application, the applicant indicated that he was single, and that she had never used a Social Security number; however, No.2, above, indicates that she was married and used Social Security number [REDACTED] as early as September 2000. These discrepancies in the applicant's submissions have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Furthermore, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Based on a review of the applicant's consolidated record and the preceding discussion, it is concluded that, beyond the decision of the director, the applicant: (1) has not submitted an identity document bearing her photograph and/or fingerprint, as required under the provisions of 8 C.F.R. § 299.9(a)(1)(ii) and (iii); (2) has not established that she is a national of a designated TPS country; and, (3) has not submitted sufficient documentation to establish that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). Therefore, the application must also be denied for these reasons.

Finally, it is noted that the applicant may be inadmissible to the United States under § 212(a)(6)(C) of the Act for having willfully misrepresented a material fact in connection with her application for TPS.

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 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.