



U.S. Citizenship  
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FILE: [REDACTED]  
[EAC 03 010 51714]

Office: VERMONT SERVICE CENTER

Date: NOV 02 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:



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, Vermont 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, counsel for the applicant submits a brief 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.

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 granted until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed her Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 11, 2002.

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 is eligible for late registration.

The record of proceedings confirms that the applicant filed her TPS 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 fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On March 15, 2004, 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 director erroneously stated that the applicant failed to respond to the Notice of Intent to Deny dated March 15, 2004, and denied the application on July 31, 2004, because the applicant had failed to establish she was

eligible for late registration. The record indicates that counsel for the applicant responded to the notice, and counsel's response was received at the Vermont Service Center on April 24, 2004, prior to the issuance date of the Notice of Denial. Therefore, the director's statement is withdrawn.

On appeal, counsel contends that the applicant did not file her Form I-821 after the expiration of the initial registration period for Salvadorans. Counsel states that the applicant mailed her application to CIS on September 9, 2002. In support of his statement, counsel submits a photocopy of a United States Postal Service Express Mail receipt indicating that counsel mailed a package to the Vermont Service Center on September 9, 2002.

Pursuant to 8 C.F.R. § 103.2(a)(7), an application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, . . . shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted.

In this case, the applicant's Form I-821 was received at the Vermont Service Center, properly executed and signed and with the correct fee attached, on September 11, 2002. The date used to determine a filing date of an application or petition before CIS is not the mailing date, but rather the date of receipt. Therefore, the applicant was not filed until September 11, 2002, two days after the expiration of the initial registration period for Salvadorans.

Counsel submits, on appeal, evidence in an attempt to establish the applicant's qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Form I-821, 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.

The second 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 claimed on her Form I-821 that she first entered the United States on January 3, 2001. She submitted the following evidence:

1. a letter dated August 28, 2002, from [REDACTED] of Brentwood Market, Inc., in Bay Shore, New York, stating that the applicant worked as a cashier for his store from January 2001 until June 2001; and,
2. an affidavit dated August 26, 2002, from [REDACTED] stating that he has known the applicant since January 2001, and that he met her because he worked with her mother.

On March 15, 2004, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Counsel, in response to the notice, submitted the following:

3. photocopies of Sprint billing statements dated: November 19, 2002; January 20, 2003; and, February 19, 2003;
4. a photocopy of the applicant's 2003 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, from Payless Shoe Source, Inc., along with a photocopy of the applicant's 2003 IRS Form 1040, U.S. Individual Income Tax Return, and the applicant's 2003 New York Form IT-201, Resident Income Tax Return;
5. an affidavit dated April 3, 2004, from [REDACTED] stating that he has known the applicant since she came to the United States in January 2001;
6. an affidavit dated April 3, 2004, from [REDACTED] stating that he has known the applicant since she came to the United States in January 2001;
7. a letter dated April 8, 2004, from Jonathan Food Corporation stating that the applicant worked for Brentwood Market in Brentwood, New York, from January 2001 until September 2002;
8. a photocopy of a billing statement dated August 8, 2003, from SB Children's Service, P.C. in Stony Brook, New York;
9. a photocopy of the applicant's Medicaid/WIC Application for Pregnant Women/Young Children, along with a photocopy of a notice dated March 7, 2003, notifying the applicant that her application under the medical assistance program had been approved effective December 11, 2002;
10. a photocopy of a New York birth certificate indicating that a son was born to the applicant in Islip, New York, on July 10, 2003;
11. a photocopy of the applicant's New York State Learner's Permit issued on March 18, 2004; and,
12. a photocopy of the applicant's Bank of America credit card issued in December 2003.

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, counsel for the applicant submits copies of the documents previously submitted in response to the Notice of Intent to Deny.

The Sprint billing statements (No. 3 above), the applicant's 2003 federal and New York State income tax returns and her IRS Form W-2 (No. 4 above), the billing statement from SB Children's Services (No. 8 above), the approval notice from Medicaid (No. 9 above), the applicant's son's birth certificate (No. 10 above), the

applicant's learner's permit (No. 11 above), and the applicant's credit card (No. 12) are all dated subsequent to the requisite periods to establish continuous residence and continuous physical presence in the United States.

The employment letter dated August 28, 2002, from Mr. [REDACTED] (No. 1 above), and the employment letter from Mr. [REDACTED] dated April 8, 2004 (No. 7 above) have little evidentiary weight or probative value as they does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, they are not in affidavit format, and Mr. [REDACTED] does not provide any information regarding the applicant's address during the period of her employment.

The applicant has submitted only two affidavits from Mr. [REDACTED] (Nos. 2 and 5 above) and an affidavit from Mr. [REDACTED] (No. 6 above) to establish her qualifying continuous residence and continuous residence in the United States during the requisite periods. She claims to have lived in the United States since January 3, 2001. It is reasonable to expect that she would have other contemporaneous evidence to corroborate her claim; however, no such evidence has been provided.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. 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 TPS on these grounds will be affirmed.

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 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.