



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
[EAC 01 212 50972]

Office: VERMONT SERVICE CENTER

Date: NOV 18 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, reopened, and denied again 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 initially denied the application on May 27, 2003, after determining that the applicant had abandoned her application by failing to appear for her fingerprint appointment or request that her fingerprint appointment be rescheduled. The applicant was informed that there is no appeal from a denial due to abandonment, but she could file a motion to reopen within 30 days.

On June 26, 2003, the applicant filed a motion to reopen. On motion, the applicant stated that she failed to appear for her fingerprint appointment because she never received the fingerprint appointment notice.

The director reopened the matter and afforded the applicant another opportunity to be fingerprinted. The applicant appeared for her fingerprint appointment.

The director subsequently denied the application on July 27, 2004, because she 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation has been granted, 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 Salvadorans was from March 9, 2001 to September 9, 2002. The record reflects that the applicant filed her Form I-821, Application for Temporary Protected Status, on June 21, 2001.

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).

The applicant indicated on the Form I-821 that she entered the United States on November 6, 2000. In support of her application, she submitted the following:

1. photocopies of two untranslated letters in the Spanish language from OHLA, Annapolis, Maryland.

On April 20, 2004, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The record does not contain a response from the applicant.

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 July 27, 2004.

On appeal, the applicant states that she failed to respond to the Notice of Intent to Deny dated April 20, 2004, because she never received the notice. The applicant states that the residents in her apartment building have had problems with mail being put in the wrong mailbox, and have even found mail in the trash can next to the mailbox. She submits the following additional evidence:

2. a letter dated August 13, 2004, from [REDACTED] stating that the applicant has been his tenant at [REDACTED] since December of 2000, and that she was added to the lease after her husband, [REDACTED], had signed at an earlier date;

3. a photocopy of a monthly rental agreement between [REDACTED] [REDACTED] dated June 1, 2000; and,
4. a letter dated August 14, 2004, from [REDACTED] stating that the applicant cleaned his home for him from January 2001 to October 2003, at which time he moved in with relatives due to failing health.

The untranslated letters from OHLA in Annapolis, Maryland are not acceptable without English translation. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS must be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Further, one of the letters is undated, and the other is dated prior to the requisite periods to establish continuous residence and continuous physical presence in the United States.

The lease between Mr. [REDACTED] and Mr. [REDACTED] does not establish the applicant's qualifying continuous residence and continuous physical presence in the United States because her name does not appear on that document. The applicant has provided only two letters from Mr. [REDACTED] and Mr. [REDACTED] (Nos. 2 and 4 above) to establish the applicant's qualifying continuous residence and continuous physical presence during the requisite periods. The applicant claims to have lived in the United States since November 6, 2000. It is reasonable to expect that she would have some type of contemporaneous evidence to support these letters; however, no such evidence has been provided.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status 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.