



U.S. Citizenship
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FILE: [REDACTED]
[EAC 04 107 54705]

Office: VERMONT SERVICE CENTER

Date: **NOV 30 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: 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.

[Signature]

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 determined that the applicant failed to establish she: 1) had been continuously physically present in the United States since March 9, 2001; and 2) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that she submitted sufficient evidence when she renewed her application and in response to requests for additional evidence. The applicant also submits additional evidence in an attempt to establish continuous physical presence in the United States during the qualifying period.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period on March 16, 2001. The director denied the application on June 3, 2002, after determining that the applicant had abandoned her application by failing to appear for fingerprinting. 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 denial. The applicant did file a motion to reopen that was denied by the director on July 7, 2003.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on February 23, 2004. The director denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration and that she had been continuously physically present in the United States since March 9, 2001. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on March 16, 2001. That initial application was denied by the director on June 3, 2002. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on February 23, 2004. Since the initial application was denied on June 3, 2002, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 as designated by the Attorney General 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 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.

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.

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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 extension granted until September 9, 2006, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on February 23, 2004.

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 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 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).

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

The record of proceeding 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 from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On April 14, 2004, the applicant was provided the opportunity 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 from March 9, 2001, to the filing date of the application. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that she entered the United States on or about July 12, 2000. According to the applicant, she provided the necessary evidence when she renewed her TPS application and in response to two requests for additional evidence. The applicant also submits additional evidence, and resubmits evidence previously provided, in an attempt to establish her continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file her TPS application 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 failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on April 14, 2004 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. Copies of earnings statements from [REDACTED] Elkridge, Maryland dated February 14, 2001, February 28, 2001 and March 28, 2001.
2. Copies of a fee receipt from the Service dated April 11, 2001, U.S. Postal Service Certified Mail receipts dated March 13, 2001 and March 16, 2001, and Global Express Money Order receipts dated May 12, 2001.
3. A copy of an escrow payment receipt from University Landing Apartments, Silver Spring, Maryland dated February 1, 2001.
4. A letter from [REDACTED] M.D. dated April 28, 2004 and a prescription from [REDACTED] for [REDACTED] dated April 17, 2001.
5. Copies of tax documents for 2000, and 2001.
6. A letter from [REDACTED] Assistant Manager, Chevy Chase Bank dated April 23, 2004.

The director concluded that the applicant had failed to establish her qualifying continuous physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant submits:

7. A copy of the first page of her passport.
8. A copy of a Security Deposit Disposition from University Landing Apartments dated April 7, 2004.
9. A prescription from [REDACTED] for [REDACTED] dated February 21, 2002.
10. A copy of a blood work request dated April 29, 2004, a letter from Holy Cross Hospital regarding a sonogram appointment on August 31, 2001, a copy of Fairfax County Health Department Clinic Test Results dated May 23, 2001, and a copy of a receipt from Holy Cross Hospital dated September 21 (year unknown).
11. Copies of receipts from Family Furniture dated May 15, 2001 and June 15, 2001.
12. Copies of a mailer from the Service dated April 11, 2001, Form I-797C Receipt Notices dated July 15, 2002, April 29, 2003, and March 3, 2004, a copy of her employment authorization card issued on April 24, 2001 and her State of Virginia identification card issued on March 3, 2001.

The earnings statements for 2000 and 2001 federal tax documents are in the name of [REDACTED] and the April 17, 2001 prescription from [REDACTED] is in the name of [REDACTED]. There is nothing in the record to establish that the applicant and [REDACTED] and/or [REDACTED] are one and the same. On this application, the applicant indicated that the only other name she used was [REDACTED]. On previous applications the applicant stated that she had not used any other names. In addition, the applicant lists her Social Security number on her applications as [REDACTED] but on the earnings statements the Social Security number is listed as [REDACTED]. Furthermore, the escrow payment document and the security deposit dispositions appear to be altered. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The Service, postal, and money order receipts listed above only indicate the applicant was present in the United States on those specific dates. Similarly in his letter, [REDACTED] can only attest to the applicant's presence on March 12, 2001 and on the dates prescriptions were written for her. These documents cannot establish the applicant's continuous physical presence from March 9, 2001 to the filing date of the TPS application. Ms. [REDACTED] states that the applicant opened a checking account with her bank on January 26, 2001. However, this letter is not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided.

The passport establishes the applicant's identity and nationality. The identification card was issued on March 3, 2001, which is prior to the requisite dates to establish continuous physical presence in the United States during the qualifying period. Of the remaining evidence, the April 11, 2001 mailer from the Service is the earliest date presented, on appeal, as evidence of the applicant's presence in the United States. This is subsequent to the dates required to establish entry, continuous residence and continuous physical presence during the qualifying period. Therefore, this evidence alone cannot establish the applicant's continuous physical presence from March 9, 2001 to the filing date of the TPS application.

The applicant has not submitted sufficient evidence to establish her qualifying continuous physical presence in the United States since March 9, 2001. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status on this ground will also 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.