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U.S. Citizenship
and Immigration
Services

ML

[REDACTED]

FILE: [REDACTED]
[EAC 03 260 54679]

OFFICE: VERMONT SERVICE CENTER

DATE: NOV 30 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:

[REDACTED]

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.

f 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 had failed to submit requested evidence to establish that she: (1) was eligible for late registration; (2) had continuously resided in the United States since February 13, 2001; and (3) had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and evidence previously furnished and contained in the record.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

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. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, with validity 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 shows that the applicant filed her initial application on September 17, 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 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).

In a notice of intent to deny dated November 14, 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). She was also requested to submit evidence establishing continuous residence and continuous physical presence during the requisite period. The director determined that the applicant had failed to respond to her request for additional evidence and denied the application on August 26, 2004.

On appeal, the applicant asserts that the director's decision was not correct because she did respond to the notice.¹ She states that she meets the qualification for late filing because (1) she was in a valid nonimmigrant status, or had been granted voluntary departure or relief from removal, based on an order of the Immigration Judge on July 27, 2000, and because (2) she had 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, based on the Form I-130, Petition for Alien Relative, filed on her behalf by her lawful permanent resident mother on July 3, 2000. It is noted that the Form I-130 was approved on November 30, 2004.

A review of the record indicates that the applicant was apprehended while attempting to enter the United States without inspection near the Hidalgo, Texas port of entry on December 11, 1999. In removal proceedings held on June 21, 2000, it was determined that the applicant is a deaf mute, she has very little ability with sign language and is unable to communicate in either English or Spanish. In his letter of request for termination of proceedings, counsel submitted a letter from a Clinical Audiologist, Washington Hospital Center, dated March 13, 2000, confirming that the applicant suffers from bilateral profound sensorineural hearing loss. On July 27, 2000, the Immigration Judge terminated removal proceedings without prejudice.

The record, as presently constituted, contains no evidence that the applicant falls under any of the criteria listed in 8 C.F.R. § 244.2(f)(2). There is no evidence that the applicant filed an application for adjustment of status to permanent residence (Form I-485) based on the approved Form I-130, and that the adjustment application was pending during the initial registration period. The Form I-130, alone, does not convey eligibility for TPS. Additionally, the applicant has no application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal that is pending or subject to further review or appeal at the time of the initial registration period. It is noted that the applicant was granted relief from removal on July 27, 2000, more than the 60-day period immediately following the termination of the removal proceedings. 8 C.F.R. § 244.2(g).

The applicant has failed 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 decision to deny the application on this ground will be affirmed.

The next issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

In a notice of intent to deny dated November 14, 2003, the applicant was requested to submit evidence establishing continuous residence and continuous physical presence during the requisite period. The director determined that the applicant had failed to respond to her request for additional evidence and denied the application on August 26, 2004.

On appeal, the applicant asserts that the director's decision was not correct because she did respond to the notice. She states that she has been present in the United States, without interruption, since her arrival in December 1999, and due to the fact of her disability (deaf-mute) and her age, she could not attend a specialized school or receive specialized service to improve her quality of life, or get a full-time job until she obtains a working permit and a Social Security number. She submits the following:

1. An affidavit from her mother, [REDACTED] attesting that the applicant has been living with her since her arrival in 1999, and because of her disability, she requires special dedication, and that her

¹ A review of the record indicates that the applicant did respond to the director's request for evidence. The response was received at the Vermont Service Center on December 3, 2003, prior to the director's decision to deny.

quality of life could be improved if she would be able to receive specialized services; however, without Social Security and TPS, she could not receive those services.

2. An affidavit dated September 12, 2004, from [REDACTED] indicating that he has been residing at [REDACTED] for the last five years, and that he can attest that the applicant has also been living at this address since 1999.
3. A letter of employment dated September 12, 2004, from [REDACTED] of [REDACTED] indicating that "from on or around November-December 2000 to this day" his company has been using the services of the applicant on a part-time basis as a helper cleaning debris and disposing materials.

The employment letter (No. 3 above) has little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter does not provide the address or addresses where the applicant resided during the period of her employment, the exact period(s) of employment, and the periods(s) of layoff, if any. Moreover, the letter was not supported by any other corroborative evidence, such as pay statements.

While the applicant's mother and [REDACTED] (Nos. 1 and 2 above) attest that the applicant has been residing in the United States since 1999, the affidavits are not supported by any other corroborative evidence. Moreover, regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. The applicant claimed to have lived in the United States since December 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support her claim, such as, immunization records, or visits to a hospital or a clinic; however, no such evidence has been provided. It is noted that the record of proceeding is devoid of any documentation to show that the applicant was even in the United States from December 1999 to the date of filing her application on September 17, 2003.

Accordingly, the applicant has failed to establish that she has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application 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.