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U.S. Citizenship
and Immigration
Services

MI

OCT 04 2005

FILE:

[LIN 03 267 50015]

Office: NEBRASKA SERVICE CENTER

Date:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 that she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits a brief statement and additional documentation.

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

The record reveals that the applicant filed a first Form I-821, Application for Temporary Protected Status, (LIN 01 178 51527 relates) on May 3, 2001, during the initial registration period. At the time of filing the application, the applicant indicated her address as [REDACTED] Huntingburg, Indiana, [REDACTED]. On May 23, 2001, the director forwarded the applicant a request, at the address indicated on her application, to appear for fingerprinting in connection with her application. The record reflects that 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 applicant's first TPS application on November 2, 2001, for failure to respond to the request 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 director's denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed the instant, second Form I-821 on September 8, 2003. The director denied this second application because it was filed outside of the initial registration period and because 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 time periods.

Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision on that application is rendered must be considered as either a request for annual re-registration or as a new filing for TPS benefits. If an applicant is filing an application for annual re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must re-register annually. In addition, the applicant must continue to maintain the conditions of TPS eligibility. 8 C.F.R. § 244.17.

Since the applicant's first Form I-821 was denied on November 2, 2001, her second application cannot be considered as an application for annual re-registration. The instant, second Form I-821 can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period.

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 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 since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. As previously indicated, the applicant filed the instant Form I-821 on September 8, 2003, one year after the initial registration period had ended.

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.

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).

On November 3, 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). The applicant was also requested to submit evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted the following:

1. Documentation regarding the births of her children: [REDACTED] born on November 27, 2001, in Jasper, Indiana; and [REDACTED] born on March 18, 2000, in Huntingburg, Indiana;
2. Documentation regarding her marriage to [REDACTED] on March 27, 1999 in Springdale, Arkansas;
3. Photocopies of her: Indiana Identification card, issued on November 5, 2001; Indiana Learner Permit, issued on August 11, 2003; Social Security card; and, Employment Authorization Document (EAD), issued on August 4, 2001; and,

4. A photocopy of her 2002 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement.

The director determined that the applicant had failed to establish that she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing her application on September 8, 2003. The director denied the application on March 23, 2004.

On appeal, the applicant submits the following additional documentation:

5. A letter, dated April 6, 2004, from Dubois County WIC Program Coordinator in Jasper, Indiana, stating that the applicant had been receiving WIC benefits since February 28, 2000;
6. A letter, dated April 13, 2004, from an acquaintance stating that he met the applicant in the United States in 2002;
7. A letter, dated April 5, 2004, from a landlord stating that he had rented a room to the applicant at [REDACTED] Huntington, Indiana, from June 2000 to April 2001;
8. A medical record dated March 20, 2000; and,
9. A certificate, dated April 15, 2004, of Medicaid coverage, indicating that the applicant received coverage from June 1999 to March 2000; April 2000 to March 2001; and July 2001 to December 2001.

The first issue to be discussed in this proceeding is whether the applicant has established her eligibility for late registration.

As previously discussed, the record confirms that the applicant filed the instant Form I-821 after the initial registration period had expired. Since the applicant's first Form I-821 was denied, the instant Form I-821 cannot be considered as an application for annual re-registration. The instant application can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period. In this case, 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 decision to deny the application for failure to establish eligibility for late registration will be affirmed.

The second issue to be discussed in this proceeding is whether the applicant has established her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

Based on a review of the record, including documentation submitted in support of the applicant's first Form I-821, it is concluded that the applicant has now submitted sufficient evidence to establish her continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing the instant application. Consequently, the director's decision to deny the application on these grounds will be withdrawn.

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.