



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: AUG 01 2006
[REDACTED] consolidated herein]
[WAC 05 223 77269]

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 for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 register in a timely manner.”

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 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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, 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 May 11, 2005.

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).

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 director determined that the applicant had "failed to register in a timely manner" and denied the application on June 28, 2005.

On appeal, the applicant asserts that she is eligible for late registration because she registered for political asylum that is currently pending, and that she is attaching copies of Employment Authorization Cards issued to her from 1998 to the present.

The record of proceeding contains Form I-213, Record of Deportable Alien, indicating that the applicant (name used: [REDACTED]) and her three children were apprehended on October 5, 1984, near Calexico, California, while attempting to enter the United States without inspection. She stated at that time that she was born in Guatemala City, Guatemala. She was subsequently ordered deported [removed] from the United States, and a Warrant of Deportation, Form I-205, was issued on November 13, 1984, in San Diego, California. On November 16, 1984, the applicant was removed from the United States to Guatemala. The record further

indicates that on February 16, 1990, the applicant was apprehended while attempting to enter the United States without inspection two miles west of the San Ysidro, California, port of entry (name used: [REDACTED] file number A29 275 601). She stated, at that time, that she was born in Guatemala City, Guatemala, that she was issued a Guatemalan passport in October 1989, but she had lost the passport in Mexico, that she was married to [REDACTED] a native and citizen of Guatemala, and that four of her five children are residing in Guatemala. In removal proceedings held on September 26, 1990, the applicant failed to appear; therefore, the Immigration Judge ordered the applicant removed from the United States to Guatemala *in absentia*.

The record of proceeding also contains a copy of Form I-589, Request for Asylum in the United States, that was previously filed by the applicant's husband [REDACTED] a Guatemalan citizen) on November 13, 1991, and a letter dated March 5, 1998, [REDACTED] requesting that his wife (the applicant) be included in his asylum application.

A review of [REDACTED] indicates that on June 11, 2001, [REDACTED] filed Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)). On November 8, 2004, in Los Angeles, California, [REDACTED] was found eligible for NACARA suspension of deportation/special rule cancellation of removal, and he was granted adjustment of status to lawful permanent resident (LPR) under the classification of Z15. Also, on November 8, 2004, [REDACTED] withdrew his application for asylum. The request for withdrawal states, in part: "I also understand that withdrawing my asylum application means that I will not be able to take advantage of any benefits that might have resulted from a grant of asylum such as derivative asylum status for any of my dependents listed on the application." This statement was signed [REDACTED] on November 8, 2004.

Regulations at 8 C.F.R. § 244.2(f)(2)(iv) simply allow spouses and children of aliens who are TPS-eligible to file applications after the initial registration period had closed; however, these regulations do not relax the requirements for eligibility for TPS. Firstly, the applicant's husband was not a TPS registrant; secondly, her husband's asylum application in which the applicant was a derivative, was withdrawn on November 8, 2004. While 8 C.F.R. § 244.2(g) allows the applicant a 60-day period immediately following the expiration or termination of condition [in this case, after the withdrawal of the asylum application] to file a TPS application for late registration described in 8 C.F.R. § 244.2(f)(2)(ii), the applicant did not file her TPS application until May 11, 2005.

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 TPS application on this ground will be affirmed.

Furthermore, it is noted that although the applicant stated that she was a citizen and national of Guatemala when she first came into contact with the Service [now, the Department of Homeland Security (DHS)] on October 5, 1984, and again on February 16, 1990, she is now claiming El Salvadoran citizenship on her TPS application. She submits an illegible El Salvadoran birth certificate, and an English translation, to support her claim. The certificate, however, was not accompanied by photo identification or a passport to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

The nationality the applicant claimed and/or established with DHS at her initial and subsequent entries into the United States, was that of Guatemala. The record is clear in establishing that the applicant elected to present herself as a national of Guatemala to the United States Government. Therefore, it appears that the applicant's "operative nationality" was not that of a TPS-designated country as held in GENCO Op. 92-34 (August 7, 1992). *See, also, Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983); *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9th Cir. 1997), and the applicant has not satisfactorily established her citizenship and nationality.

In addition, the Federal Bureau of Investigation fingerprint results report, contained in the record of proceeding, shows that on March 9, 2003, in Los Angeles, California, the applicant, under the name [REDACTED] was arrested for "OBSTRUCT/RESIST EXEC OFF." The actual final court disposition of this arrest is not included in the record of proceedings. CIS must address this arrest and/or conviction in any future decisions or proceedings.

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.