



U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 04 196 51102]

Office: VERMONT SERVICE CENTER

Date: MAR 27 2006

IN RE: Applicant: [REDACTED]

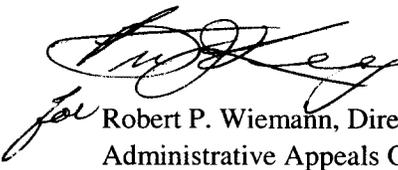
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


for 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 (AAO) on appeal. The appeal will be dismissed.

The applicant is stated 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 failed to establish she was eligible for late registration. The director also determined that the applicant failed to establish that she had been continuously residing in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. The director further determined that the applicant failed to establish that she is a national of El Salvador.

On appeal, counsel submits the applicant's original birth certificate and copies of documentation previously submitted.

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 filed her initial TPS application on November 14, 2002. That application was denied on July 14, 2003, for abandonment. 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 was given until August 17, 2003, to file a motion.

Counsel for the applicant filed a motion on January 26, 2004, five months after the allotted timeframe.

In a decision dated April 28, 2004, the director granted the applicant's motion to reopen despite the motion being filed five months after the allotted timeframe. The director determined that the motion "meets the requirements of 8 CFR 103.5 concerning the proper filing of a motion."

On motion, the director informed the applicant that her initial TPS application was denied because she failed to respond to the Service's request for evidence to establish her eligibility to file for late registration, her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

The director determined after a complete review of the record, including the applicant's motion, that the grounds for denial had not been overcome. The director denied the application on April 28, 2004.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on June 17, 2004. The director denied this second application on February 15, 2005, 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. The director also determined that the applicant failed to establish her continuous residence and her

continuous physical presence in the United States during the requisite timeframes. The director further determined that the applicant failed to establish her nationality.

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 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.

The first issue raised by the director to be addressed in this proceeding is whether the applicant has established that she is a national of El Salvador.

An applicant is eligible for temporary protected status only if such alien establishes that he or she is a national of a foreign state designated under section 244(b) of the Act. 8 C.F.R. § 244.2(a).

On appeal, counsel presented an original copy of what appears to be the applicant's birth certificate. This birth certificate appears to be a different version of the previously submitted copy of the applicant's birth certificate. Both birth certificates are in a foreign language. However, the birth certificate presented on appeal is not accompanied by an English translation. 8 C.F.R. § 204.1(f)(3) states that foreign language documents must be accompanied by an English translation, which has been certified by a competent translator. As the birth certificate presented on appeal appears different than the previously submitted birth certificate, it must also be accompanied by an English translation. Consequently, the applicant has not established that she is a national of El Salvador. Therefore, the director's decision to deny the application for temporary protected status for this reason will be affirmed.

The second issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 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).

On appeal, counsel did not address the issue of late registration. No documentary evidence has been submitted on appeal to establish that the applicant 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 temporary protected status for this reason will be affirmed.

The remaining issues raised by the director to be addressed in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and whether she has been continuously physically present in the United States since March 9, 2001.

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 entry on or prior to February 13, 2001, 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, 2006, upon the applicant's re-registration during the requisite time period.

On appeal, counsel contends that the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. In support of her statement, counsel submits copies of documentation previously submitted.

Counsel has provided no new documentary evidence on appeal to establish the applicant's continuous residence and her continuous physical presence in the United States during the requisite timeframes. The applicant has not met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2 (b) and (c). Consequently, the director's decision to deny the application for temporary protected status for these reasons will also be affirmed.

Beyond the decision of the director, the applicant has not provided any documentation to establish her identity. Therefore, the application must also be denied for this reason.

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.