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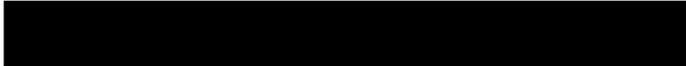
**MAY 04 2006**

*(consolidated therein)*

[EAC 04 070 50719]

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.

  
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 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 arrived in the United States in 1997 and requests that her case be reopened. The applicant also submits additional evidence, and resubmits evidence previously provided, in an attempt to establish continuous residence and 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 13, 2001. That application was denied as abandoned on October 11, 2001, for failure 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 not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on January 12, 2004. The director denied this application because it was filed outside of the initial registration period, because the applicant had failed to establish her eligibility for filing under the provisions of late registration, and because the applicant failed to establish 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 13, 2001. That initial application was denied by the director on October 11, 2001. 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 January 12, 2004. Since the initial application was denied on October 11, 2001, 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 January 12, 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 May 7, 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 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 first applied for TPS in 2001. According to the applicant, she has been in the United States since 1997, but when she began working her mother's name was incorrectly placed on her paychecks. The applicant also submits additional evidence 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 May 7, 2004 to submit evidence establishing her qualifying continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. Copies of pay stubs in the name of [REDACTED] for pay periods ending March 5, 1999, May 14, 1999, September 17, 1999, June 15, 2000, April 6, 2001, August 1, 2001, February 22, 2002, July 12, 2002, and November 29, 2002.
2. A NOVA Fairfax Hospital Clinic Appointment card dated February 19, 2002.
3. A Fairfax County, Virginia Department of Health receipt dated August 29, 2001, and a receipt from [REDACTED] dated March 18, 2002.
4. A Fairfax Hospital Obstetrics Clinic Estimated Financial Responsibility Form dated October 5, 2001, and a Tuberculosis Evaluation Certificate dated June 20, 2001.
5. Form I-797C, Receipt Notices dated April 9, 2001 and copies of an employment authorization card issued on April 17, 2001.

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

6. Copies of pay stubs in the applicant's name for pay periods ending January 29, 2002, and July 12, 2002.
7. Copies of a Tuberculosis Evaluation Certificate dated June 20, 2001 and a Patient Information form dated June 28, 2001.
8. A letter from Fairfax County Department of Health regarding a September 5, 2001 X-ray and a Proof of Birth Letter indicating the applicant's son was born on December 30, 2001.
9. A Fairfax Hospital Obstetrics Clinic Estimated Financial Responsibility Form dated October 19, 2001.
10. A copy of a Commonwealth of Virginia Department of Social Services Checklist of Needed Verifications dated April 24, 2002.
11. Copies of a Robert Express receipt dated December 12, 2004.

The applicant also resubmits evidence previously provided.

The applicant states on appeal, that her mother's name was incorrectly written on her pay stubs. Although the applicant's mother's name is [REDACTED] the applicant has failed to provide any evidence that she actually

worked under that name. Furthermore, some of the pay stubs that are in the applicant's name are dated prior to pay stubs that are in the name of [REDACTED]. This discrepancy has not been satisfactorily explained. 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).

A Tuberculosis Evaluation Certificate indicates a date of June 20, 2001, and is the earliest date presented, on appeal, as evidence of the applicant's presence in the United States. Therefore, this evidence is of little or no probative value.

The applicant has not submitted sufficient evidence to establish her 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.

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish her qualifying continuous residence during the requisite time periods. Therefore, the application must be denied for this reason as well. Beyond the director's decision, it is also noted that the record contains a Form I-205, Warrant of Removal and Deportation dated March 24, 1998. It does not appear that the warrant was executed. However, it presents the possibility that the applicant was deported and returned to the United States, without permission contrary to section 212(a)(9) of the Immigration and Nationality Act.

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.