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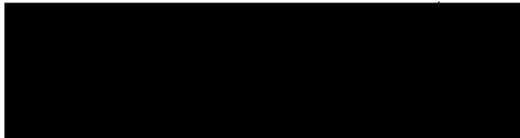
U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 07 2007
[WAC 05 228 72088]

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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Temporary Protective Status (TPS) 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 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 her nationality or identity and also because she did not establish her eligibility 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 asserts her claim of eligibility for TPS.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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 in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted with validity until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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).

The record of proceedings shows that the applicant filed her TPS application on May 16, 2005. The director denied the application on June 22, 2006, due to abandonment, because the applicant failed to report for her Biometrics as scheduled. The applicant filed a Motion to Reopen on August 16, 2006, stating that she appeared for her Biometrics appointment on July 29, 2005. On August 24, 2006, the director reopened the TPS application. The director subsequently denied the TPS application on September 7, 2006, because the applicant had failed to establish her nationality or identity, her eligibility for late registration, or her continuous residence and continuous physical presence in the United States.

The first issue in this proceeding is whether the applicant has submitted sufficient evidence to establish her identity and nationality.

Persons applying for TPS offered to El Salvadorans must demonstrate that he or she is a citizen or national of a state designated under section 244(b) of the Act.

The regulations at 8 C.F.R. § 244.9 state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

On May 26, 2005, the director requested that the applicant submit evidence to establish her nationality or identity. The applicant failed to respond to the director's request. The director denied the application on September 7, 2006, because the applicant failed to establish her eligibility for TPS.

On appeal, the applicant asserts her claim of eligibility for TPS and submits as evidence a copy of her El Salvadoran birth certificate with English translations, and a copy of her El Salvadoran passport.

The applicant has submitted sufficient evidence on appeal to establish her El Salvadoran identity or nationality. 8 C.F.R. § 244.2(a)(1). Consequently, the director's decision with respect to this issue will be withdrawn.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS), on May 16, 2005.

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 director denied the TPS application on September 7, 2006, because the applicant failed to establish her eligibility for late registration.

On appeal, the applicant states that she is eligible for TPS as the child of a TPS registrant, and she submits a copy of her birth certificate with English translations, and copies of her mother's and father's Employment Authorization Cards, with their eligibility categories listed as A12.

The applicant has submitted sufficient evidence to establish that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision with respect to this issue will be withdrawn.

The final issue in this proceeding is whether the applicant has established 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 that the applicant had not established continuous residence and continuous physical evidence in the United States as required, and denied the TPS application on September 7, 2006.

On appeal, the applicant states that she is eligible for TPS, and submits copies of her school records from Mulberry Elementary School for the 2004 and 2005 academic years.

The applicant has not submitted sufficient credible evidence to establish her qualifying residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. While regulations may allow children of aliens who are TPS-eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS as detailed in 8 C.F.R. §§ 244.2(a) through (e).

The applicant must submit sufficient independent evidence to demonstrate that she, not her parents, has continuously resided in the United States, and has been continuously physically present in the United States during the requisite time periods. The applicant acquires no "derivative status" from her parents, nor does "constructive residence" apply under TPS regulations and statute. There is no further humanitarian relief provisions available to children of TPS registrants under the TPS program.

In a narrative statement recorded in the Form I-213, Record of Deportable /Inadmissible Alien, dated August 12, 2004, the applicant's adult guardian stated that she and the applicant left El Salvador on July 6, 2004, traveling by

bus through Guatemala, and entered Mexico on or about July 9, 2004. She continued by stating that they arrived in Piedras Negras, Mexico, on August 8, 2004, and illegally entered the United States by wading across the Rio Grande River, where they were apprehended on August 12, 2004. Therefore, the applicant cannot satisfy the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).

It is indicated in the copies of the applicant's school records from Mulberry Elementary School that her enrollment date was November 23, 2004. The applicant cannot demonstrate, as is required by statute, that she was present in the United States during the initial registration periods, from February 13, 2001 to May 16, 2005, the date of filing. Consequently, the director's decision to deny the application for temporary protected status with respect to this issue will be affirmed.

It is noted that an outstanding Warrant of Removal/Deportation, dated April 20, 2005, for the removal of the applicant from the United States to El Salvador remains outstanding.

An alien applying for TPS 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. Although the applicant has established her nationality, identity, and her eligibility as a late registrant based upon her parent's TPS status, she has failed to meet her burden of proof with respect to her entry into the United States on or before February 13, 2001, and continuous residence and continuous physical presence in the country. The application will therefore be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.