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U.S. Citizenship
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Services

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FILE: [REDACTED]
[WAC 06 158 70125]

OFFICE: California Service Center

DATE: MAY 08 2007

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a 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 on the grounds that the applicant failed to establish that she (1) had maintained continuous physical presence and continuous residence in the United States since the dates applicable for TPS applicants from El Salvador, and (2) had registered for TPS during the initial registration period.

On appeal the applicant asserts that her father has been granted TPS and that she, as the child of a TPS registrant, is derivatively eligible 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.

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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The applicant filed her initial Form I-821, Application for Temporary Protected Status, on March 6, 2006. On that form the applicant stated that she entered the United States without inspection on December 1, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) 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). See 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. See 8 C.F.R. § 244.9(b).

On May 30, 2006, the service center requested the applicant to submit evidence that she met the requirements for late registration, that she had resided continuously in the United States since February 13, 2001, and that she had been continuously physically present in the country since March 9, 2001. In denying the application in a Notice of Decision dated August 4, 2006, the director found that the evidence submitted by the applicant was insufficient to show that she met the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador, and that she filed for TPS during the initial registration period.

On appeal the applicant asserts that she is eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv) as the child of an alien (her father) who is currently eligible for TPS. As evidence thereof the applicant resubmits a copy of her birth certificate, which records that she was born in El Salvador on October 22, 1991, and identifies

[REDACTED] as her father, as well as a copy of an Employment Authorization Card issued to her father with a validity period of July 25, 2005 – September 9, 2006.

The documentation submitted on appeal, supplemented by CIS records, establishes that the applicant's father, [REDACTED] filed for TPS during the initial registration period, was approved, and has subsequently filed re-registration applications which have also been approved. The AAO determines that the applicant is eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv). As the applicant did not enter the United States until December 1, 2004, however, she was not continuously physically present in the United States since March 9, 2001, nor a continuous resident of the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Late filing children of TPS-eligible parents must meet the same continuous residence and continuous physical presence requirements as their parents. Thus, if a child of El Salvadoran parents has not been a continuous resident of the United States since February 13, 2001, and continuously physically present in the country since March 9, 2001, he or she is ineligible for TPS regardless of the parents' eligibility.

The AAO will affirm the director's denial of the application on the grounds that the applicant has not been a continuous resident of the United States since February 13, 2001, and continuously physically present in the United States since March 9, 2001, as required for all TPS applicants from El Salvador.

The AAO also notes that the applicant is subject to a Warrant of Removal/Deportation, dated December 18, 2006, based upon the final order of an Immigration Judge pursuant to section 212(a)(6)(A)(i) of the Act.

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. The applicant has failed to meet that burden.

ORDER: The appeal is dismissed.