



U.S. Citizenship
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FILE:



[WAC 05 148 74623]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAY 21 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) 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.

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.

The record reveals that the applicant filed a TPS application during the initial registration period on March 23, 2001, under receipt number WAC 01 168 55827. The District Director, San Francisco, California, denied that application on August 26, 2002, because the applicant had failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. On September 18, 2002, the applicant filed an appeal from the denial decision. The AAO dismissed the appeal on February 28, 2003, after determining that the applicant had provided insufficient evidence to establish continuous residence and continuous physical presence during the requisite period.

The applicant filed Form I-821, Application for Temporary Protected Status, and Form I-765, Application for Employment Authorization, on September 9, 2003, and indicated that she was re-registering for TPS. The San Francisco district director denied that application on April 16, 2004, because the applicant had failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The applicant was advised that, "your appeal of your previous denial was dismissed on February 28, 2003." On May 13, 2004, the applicant filed an appeal from the denial decision. The AAO dismissed the appeal on January 17, 2006, because the applicant had not submitted sufficient evidence to establish that she had met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 25, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application on March 6, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that she is eligible for TPS because she is a national of El Salvador and that she has continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001. She further asserts that she has previously submitted evidence of her eligibility and she has been repeatedly granted work authorization. She submits additional evidence in an attempt to establish residence and physical presence in the United States.

The fact that the applicant was issued Employment Authorization Cards (EAD) is not evidence that she has been granted TPS. Based upon filing of the I-821 application for TPS, the applicant was afforded temporary treatment benefits and was issued Employment Authorization upon establishing *prima facie* eligibility¹ for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS.

The applicant is filing the current TPS application as a re-registration; therefore, 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.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

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.

¹ Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if un rebutted will establish a claim of eligibility under section 244 of the Act.