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U.S. Citizenship
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Services

MM

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **MAY 21 2007**
[EAC 04 062 50465]

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
Robert P. Wiemann, Chief
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 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 her continuous residence and her continuous physical presence in the United States during the requisite timeframes.

On appeal, the applicant provides a brief statement, some additional documentation, and a copy of one previously submitted document.

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 is eligible for late registration.

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."

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).

The applicant filed her initial TPS application on July 19, 2002. That application was denied on August 18, 2003. The applicant was advised that an appeal could be filed within 30 days from the date of the denial notice. The applicant did not file an appeal.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on November 26, 2003.

In a notice of intent to deny, dated April 7, 2004, the applicant was requested 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 residence in the United States from February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, and evidence of her nationality and identity. The applicant failed to respond to the notice of intent to deny.

The director determined that the applicant failed to establish her eligibility for 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 denied the application on June 9, 2004.

On appeal, the applicant states that her spouse “already applied for his citizenship” and filed a Form I-130, Immigrant Petition for Relative, Fiance(e), or Orphan, on her behalf. The record indicates that the applicant married on April 2, 2002. The record also contains a receipt notice dated November 5, 2003, indicating that the Service had received the applicant’s Form I-130 petition. Nevertheless, this does not meet any of the requirements for late registration. The applicant has not established 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 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 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, 2007, upon the applicant’s re-registration during the requisite time period.

As previously stated in the above mentioned notice of intent to deny, dated April 7, 2004, the applicant was requested to submit evidence establishing her continuous physical presence in the United States since March 9, 2001, and her continuous residence in the United States since February 13, 2001.

The director determined that the applicant failed to submit evidence to establish her continuous residence and her continuous physical presence in the United States during the requisite timeframes and denied the application on June 9, 2004.

On appeal, the applicant states that she came to the United States on January 6, 2001. The applicant also states that she has been living with [REDACTED] and has been paying him \$300 per month. The applicant further states that she and [REDACTED] got married on April 2, 2002. The applicant submits a copy of a previously submitted airline ticket receipt from Continental Airlines issued in Los Angeles, California on January 5, 2001; a copy of [REDACTED] alien registration card; a copy of [REDACTED] Social Security card; a receipt from [REDACTED] Newark, New Jersey, dated July 31, 2001, a letter dated June 26, 2001, from [REDACTED] Medical Center; and, rent receipts signed by [REDACTED] in the amount of \$300 for the months of February through December, 2001. She also submits a copy of the marriage certificate dated April 2, 2002.

The additional documentation presented on appeal is not sufficient in establishing the applicant's continuous residence and her continuous physical presence in the United States during the requisite timeframes. The rent receipts are generic and, therefore, carry little weight. Without additional supporting documentary evidence such as earnings statements, employee records, utility bills, and bank statements, the documentation provided is not sufficient for meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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.

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.