



U.S. Citizenship
and Immigration
Services

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FILE:



Office: Vermont Service Center

Date:

OCT 04 2007

[EAC 07 032 71627]

IN RE:

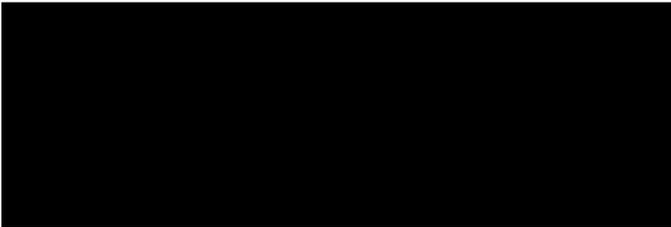
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

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 stated to be 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 record reveals that the applicant filed a late initial TPS application on November 1, 2006, under CIS receipt number EAC 07 032 71627. The Director, Vermont Service Center, denied the application on April 13, 2007, because the applicant failed to submit evidence to establish eligibility for late initial registration for TPS, and to establish the requisite continuous residence, and continuous physical presence in the United States.

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 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 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.

Brief, casual, and innocent absence 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 continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. 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 November 1, 2006.

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).

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 he or she 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).

On appeal, counsel asserts that the applicant is eligible for TPS, and states that the applicant has submitted sufficient evidence to establish her eligibility for TPS. Counsel also states that the applicant had an asylum application, and from approximately 1990 through 2005, Employment Authorization Cards (EAD) were issued to the applicant under "C 08" classification. With the appeal, counsel submits photocopies of EADs issued to the applicant for the period from 2000 – 2005, and additional evidence, including tax returns for the period 2001 through 2006.

The first issue in this proceeding is whether the applicant has established eligibility for late initial registration for TPS.

The evidence of record does not mitigate the applicant's failure to file her Form I-821, Application for Temporary Protected Status, within the initial registration period.

It is noted that the record reveals that the applicant's asylum application was denied on September 27, 1995, she was placed in deportation proceedings, and was granted voluntary departure by an Immigration Judge on December 20, 1999. A subsequent appeal to the Board of Immigration Appeals (BIA) was terminated on June 26, 2001.

In order for the applicant to be eligible for late TPS registration, as a former asylum applicant, she should have submitted her TPS application, no later than 60 days immediately following termination of her asylum application pursuant to the regulations 8 C.F.R. § 244.2(f)(2) and 8 C.F.R. § 244.2(g). As noted above, on June 26, 2001, the BIA terminated the applicant's appeal of the denial of her asylum application. However, the applicant continued to receive EADs, inadvertently, and her last EAD expired on July 16, 2005. The applicant did not file her initial TPS application until November 1, 2006.

The evidence submitted does not mitigate the applicant's failure to file her Form I-821, Application for Temporary Protected Status, within the initial registration period. Therefore, the applicant does not meet the regulatory requirements for late initial registration.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for this reason must be affirmed.

The next issue in this proceeding is whether the applicant has established her continuous residence since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing, November 1, 2006.

The record of proceedings contains sufficient evidence to establish the requisite continuous residence and continuous physical presence. Therefore, the director's decision to deny the application for these reasons is withdrawn.

It is also noted that the applicant's Federal Bureau of Investigation (FBI) fingerprint results report, completed in connection with her TPS application, reflects that the applicant was arrested on December 6, 1994, and charged with:- Charge 1: "SHOPLIFT." The FBI fingerprint results report also shows a conviction for "PETTY THEFT UNDR 50 WITHOUT PRIOR." The AAO notes that the final court dispositions are not in the record of proceeding. CIS must address this arrest in any future proceedings.

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.