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U.S. Citizenship
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Services

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OCT 24 2007

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE:

[EAC 07 010 79539]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

[REDACTED]

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 had failed to submit sufficient evidence to establish: (1) that she was eligible for late registration; (2) her identity and nationality; and (3) that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits additional evidence.

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.

- (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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

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 March 9, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial application on October 10, 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 Citizenship and Immigration Services (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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed her application after the initial registration period had closed. 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 noted that it appears the applicant was basing her eligibility for late initial registration on her asylum application that was pending at the time of the initial registration period. The director determined that the applicant, however, did not qualify under this condition because she did not file her application within 60 days of the withdrawal of her asylum application and denied the TPS application on March 30, 2007.

On appeal, the applicant submits additional evidence in an attempt to establish residence and physical presence in the United States. The applicant, however, neither addressed nor submitted any evidence to establish that she was eligible for late registration.

A review of the record indicates that on November 16, 1988, the applicant's [REDACTED] filed Form I-589, Request for Asylum in the United States. [REDACTED] listed his four children, including the applicant, on the Form I-589, and noted that they all reside in [REDACTED]. On March 12, 2001, the applicant was added as a dependent of [REDACTED] in his asylum application. Form [REDACTED]

Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)) was subsequently filed by [REDACTED]. On October 6, 2003, the NACARA application was approved, and [REDACTED] granted adjustment of status to lawful permanent resident (LPR) under the classification of Z15. Also on October 6, 2003, [REDACTED] withdrew his application for asylum.

While 8 C.F.R. § 244.2(g) allows the applicant a 60-day period immediately following the expiration or termination of condition, in this case, after the asylum was withdrawn, to file a TPS application for late registration described in 8 C.F.R. § 244.2(f)(2)(ii), the applicant did not file her TPS application until October 10, 2006.

Accordingly, the applicant has failed to establish 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 TPS application on this ground will be affirmed.

The second issue in this proceeding is whether the applicant has established her identity.

The director noted that the applicant had failed to submit a copy of an identity document. On appeal, the applicant neither addressed nor submitted any evidence to establish her identity.

Although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the director's decision to deny the TPS application on this ground will also be affirmed.

The third issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

The director determined that the evidence submitted by the applicant to establish continuous residence and continuous physical presence was insufficient. He noted that the evidence did not completely span the requisite time periods. The director, therefore, denied the application on March 30, 2007.

On appeal, the applicant submits copies of Student Attendance Records for school years 2000-2001, 2001-2002, and 2002-2003 at Washington Prep High School, Los Angeles, California. The attendance records indicate that the applicant's "1st US Enrollment" was February 10, 2001. She also submits copies of California birth certificates of her two children born on August 22, 2003 and September 22, 2006; a copy of Form I-797C, Notice of Action, indicating that the applicant is the beneficiary of an Immigrant Petition for Relative, Form I-130, filed by her father on September 20, 2004; and a copy of a pay statement dated September 20, 2005, from California Costume Collections, Inc., Los Angeles, California.

The evidence furnished by the applicant on appeal, in conjunction with other evidence included in the record of proceeding, is sufficient to establish that the applicant has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). Therefore, the applicant has overcome these findings of the director.

The applicant, however, is ineligible for TPS because she has failed to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2), and because she has failed to submit evidence to establish her identity and nationality.

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.