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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

FEB 05 2008

[WAC 05 222 84548]

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is native and citizen of El Salvador who seeks 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 did not submit evidence that she was eligible for late registration.

On appeal, counsel for the applicant asserts that the applicant is eligible for TPS as the spouse of a TPS registrant.

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.

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.

Persons applying for TPS offered to 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. 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.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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 record reflects that the applicant filed her initial TPS application on March 8, 2005 - more than two years after the close of the initial registration period for Salvadorans. In support of her application, the applicant submitted documentation establishing that she was married to TPS registrant [REDACTED], alien registration number [REDACTED] on December 15, 1998, in Soyapango, El Salvador.

On January 4, 2007, the director requested that the applicant submit evidence establishing her eligibility for late registration, her identity and nationality, her qualifying continuous residence and continuous physical presence in the United States, and a final court disposition for an arrest on August 22, 2002, for Concealment/Altering the Price of Merchandise under \$200. In response, the applicant submitted photocopies of the following:

1. Her Salvadoran passport;

2. Her birth certificate;
3. Her Virginia learner's permit issued on September 16, 2000;
4. A letter from the Internal Revenue Service (IRS), dated April 13, 2001;
5. The birth certificate of her child, [REDACTED] born on October 15, 2001, in Fairfax County, Virginia;
6. The birth certificate of her child, [REDACTED] born on August 18, 2003, in Fairfax County, Virginia;
7. A 2000 IRS Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, filed jointly by the applicant and her husband;
8. A Bank of America Combined Tax Statement For Year 2000 addressed to the applicant and her husband; and,
9. A 2001 IRS Form 1040, U.S. Individual Income Tax Return, with corresponding IRS Form W-2, Wage and Tax Statement, filed jointly by the applicant and her husband.

The applicant did not submit the final court disposition for her arrest on August 22, 2002.

On May 2, 2006, the director denied the application, finding that the applicant had failed to provide the requested court disposition and was therefore ineligible for TPS and late registration.

On appeal, counsel for the applicant asserts that the applicant is eligible as the spouse of a TPS registrant. The applicant submits additional documentation, including the final court disposition of her 2002 arrest, indicating that:

On October 2, 2002, in the County of Prince William General District Court, the applicant was convicted of Concealing Merchandise under \$200, or Petit Larceny, under the Code of Virginia § 18.2-03.

In Virginia, Petit Larceny is considered a class 1 misdemeanor. The authorized punishment for conviction of a class 1 misdemeanor is confinement in jail for up to twelve months. The applicant's conviction for Concealing Merchandise under \$200 is a misdemeanor for purposes of determining TPS eligibility. There is no indication in the record that the applicant has any other criminal convictions. Therefore, she has only been convicted of one misdemeanor and is not ineligible for TPS based on this single conviction.

When the applicant filed her re-registration application she was the spouse of an alien eligible to be a TPS registrant and was, therefore, eligible to file a late application for TPS under 8 C.F.R. § 244.2(f)(2)(iv). The director's decision to deny the application for TPS on this ground will be withdrawn.

Furthermore, the documents submitted in response to the director's request for evidence establish the applicant's qualifying continuous residence and continuous physical presence. She has, therefore, satisfied the continuous residence and continuous physical presence requirements of 8 C.F.R. § 244.2(b) and (c).

The applicant's passport establishes her identity and Salvadoran nationality.

The applicant has satisfied all requirements for TPS. Therefore, the appeal will be sustained and the application will be approved.

An alien applying for TPS has the burden of proving that he or she meets the requirements cited above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The appeal is sustained and the application is approved.