



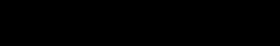
U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

MS



FILE:



Office: VERMONT SERVICE CENTER

Date: SEP 01 2009

[EAC 08 184 51536]

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 Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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 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 determined that the applicant failed to establish she: 1) had continuously resided in the United States since February 13, 2001; and 2) was eligible for late registration. The director also determined that the applicant had failed to submit requested court documentation relating to her criminal record. The director, therefore, denied the application.

On appeal, the applicant states that she did not submit enough proof to show that she had resided in the United States since August 28, 2000. The applicant submits evidence in an attempt to establish her qualifying 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, 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.

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 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 granted until September 9, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on June 2, 2008. The applicant submitted her initial TPS application on February 28, 2002 under receipt number SRC 02 117 55385. The Director, Texas Service Center, denied that application as abandoned on March 25, 2003, because the applicant failed to respond to a request for evidence to establish her continuous residence in the United States. There is nothing in the record to indicate that the applicant filed a motion to reopen the director's decision.

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 United States Citizenship and Immigration Services (USCIS). 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).

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

- (1) On November 1, 2006, the applicant was arrested by the Cobb County, Georgia Police Department for “Cruelty to Children,” a felony and “Simple Battery,” a misdemeanor ([REDACTED])

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 from March 9, 2001 through September 9, 2002, she fell within the

provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On September 17, 2008, the applicant was provided the opportunity 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 since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant was also requested to submit the final court disposition(s) relating to her criminal record. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. She did not present the requested court documentation or evidence of her eligibility for late registration. Therefore, the director denied the application. The applicant has not submitted sufficient evidence 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 conclusion that the applicant failed to establish her eligibility for late registration will be affirmed.

On appeal, counsel states that she agrees that she did not provide enough evidence to establish her continuous residence in the United States. According to the applicant, her partner destroyed all of her papers except for the ones she submitted. The applicant also submits evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States. However, this does not mitigate the applicant's failure to file her TPS application within the initial registration period.

The second and third issues in this proceeding are whether the applicant has established her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

In support of this TPS application, the applicant submitted:

1. Copies of her Salvadoran passport and State of Georgia Identification Card issued on April 20, 2002.
2. Copies of a Social Security Administration Statement showing earnings for 2002 through 2007 and 2001 through 2006 tax documents.
3. Copies of a Certificate of Health signed by [REDACTED] indicating the applicant has been a patient since 2001, and a bill dated October 23, 2001.
4. Copies of money transfer receipts dated October 28, 2000.

As stated above, the applicant was requested on September 17, 2008 to submit evidence establishing her

qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

5. A Copy of an Election Not to Prosecute dated August 17, 2007.
6. Copies of 2002 through 2006 W-Form, Wage and Tax Statements.
7. A letter from [REDACTED] and accompanying medical records dated May 2, 2003 through August 7, 2008.
8. Copies of hand-written receipts dated November 2002, December 18, 2002, January 2, 2003 and January 16, 2003, a letter from [REDACTED] indicating the applicant opened a savings account and a checking account with Bank of America on May 23, 2003 and March 16, 2006 respectively, and a State of Georgia birth certificate for the applicant's daughter who was born on January 27, 2003.

The applicant also resubmitted evidence previously provided.

The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant submits:

9. A letter from the Deputy Clerk, Magistrate Court of Cobb County indicating that the Solicitor of the State Court of Cobb County has elected not to prosecute the applicant for the "Simple Battery" and "Cruelty to Children" charges.
10. Copies of statements from [REDACTED] and [REDACTED]
11. Copies of a Perfect Attendance Certificate dated October 17, 2008, a Certificate of Immunization indicating treatment from April 4, 2003 through September 11, 2007, and a Certificate of Ear, Eye and Dental Examinations dated September 11, 2007 for the applicant's daughter.
12. Copies of a Bank of America Bank Statement for September 17, 2007 through December 6, 2007; a receipt from Marietta Health Center dated May 24, 2006; a Ownership Certificate from Aaron's Sales and Lease Ownership dated February 27, 2000; T-Mobil statements with due dates of March 1, 2007 and April 1, 2007; payroll receipts dated June 10, 2005 and December 9, 2005; and a receipt in Spanish dated March 24, 2007.

The applicant also resubmits evidence previously provided.

The passport establishes the applicant's identity and nationality. [REDACTED] of Cisneros Jovel Inc. states that he employed the applicant since November-December 2000. However, this statement has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, [REDACTED] does not provide the address where the applicant resided during the period of her employment. It is further noted that the [REDACTED] did not indicate the applicant's exact dates of employment or her duties of employment. Mr. [REDACTED] and [REDACTED] the applicant's sister states that the applicant has lived in their house since August 2000. However, these statements also lack evidentiary weight or probative value. These statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. [REDACTED] fails to indicate the applicant's exact dates of treatment. The money transfer receipt and the Ownership Certificate indicate the applicant was present in the United States prior to the dates to establish continuous residence and continuous physical presence. The copy of the 2001 tax return is in the name of the applicant and her spouse [REDACTED]. However, the accompanying W-2 is for [REDACTED] only. It is further noted that the tax documents indicate the applicant worked in the United States during those years, but the documents can not establish the applicant's continuous residence and continuous physical presence in the United States during the qualifying period. The remaining evidence is dated subsequent to the dates to establish continuous residence and continuous physical presence. Therefore, these documents are of little or no probative value in establishing the applicant's continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001 to the filing date of the TPS application.

The applicant has not submitted sufficient evidence to establish her qualifying residence since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001 to the date the application was filed. She has, therefore, failed to establish that she has met the 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 on these grounds will also be affirmed.

The fourth issue in this proceeding is whether the applicant has submitted the requested court documents pertaining to her criminal record. As stated above, on appeal the applicant submitted a certified letter from the Deputy Clerk, Magistrate Court of Cobb County, as well a certified Election Not to Prosecute which indicates that it was determined not to prosecute the applicant for "Simple Battery" or "Cruelty to Children." Therefore, this basis of the director's decision to deny the TPS application is withdrawn.

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