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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

M₁

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date JUN 01 2010

IN RE:

Applicant:

[Redacted]

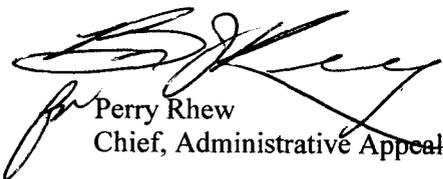
APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
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 case is remanded to the director for further action.

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; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that she had an Application for Suspension of Deportation or Special Rule Cancellation of Removal (NACARA), pending during the initial registration period and, therefore, she is eligible for the benefit sought. The applicant also submits evidence 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 Secretary, Department of Homeland Security (Secretary), is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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 September 4, 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 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).

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 May 1, 2009, 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, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant asserts that she is eligible for late initial registration because she had an NACARA application pending that was not denied until April 8, 2009. A review of Service records reflects that the applicant filed her NACARA application on June 6, 2000, and a NACARA Ineligibility Referral was issued on April 8, 2009. It is also noted that the applicant had an asylum application that was denied on March 10, 2006.¹ The applicant has submitted sufficient evidence to establish that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(ii). Consequently, the director's conclusion that the applicant failed to establish her eligibility for late registration will be withdrawn.

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.

As stated above, the applicant was requested on May 1, 2009, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. Copies of a Final Escrow Account Disclosure Statement dated January 15, 2002; a Family First monthly statement dated May 1, 2003; an AAA Personal Auto Policy Declarations Statement for a period from January 23, 2009 to January 23, 2010; a Far West Bank monthly statement dated May 3, 2009; and a Traffic School receipt dated March 29, 2007.

¹ A notice to the applicant informing her of the denial of her asylum and withholding of removal was issued on March 18, 2006.

2. Copies of 2002 and 2004 W-2 Wage and Tax Statements; earnings statements dated March 4, 2005, January 25, 2006 and March 25, 2006.
3. Copies of statements from [REDACTED] and [REDACTED]

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:

4. Copies of her children's birth certificates indicating dates of birth for the children of January 26, 1987 and January 28, 1994; and a statement from [REDACTED]
5. Copies of 1998, 2000, 2001, 2002, 2003, 2004, and 2006 tax documents; a Servicing Disclosure Statement and an Affiliated Business Arrangement Disclosure dated March 16, 2001; a Homecoming Financial Final Escrow Disclosure Statement dated January 15, 2002; a Verizon Service Agreement January 22, 2002; a letter from Citi Financial dated June 18, 2001; American National Insurance Company statements dated July 9, 2001 and July 6, 2005; and an Activity Report from Universal Life indicating activity from July 21, 2001 through June 9, 2002.
6. Copies of a Woodland Financial, Inc. Statement dated March 5, 2002; a Property Valuation Notice dated July 26, 2002; a Countrywide Statement dated September 1, 2002; a Social Security Administration FICA Earnings Summary indicating earnings from 2001 through 2005; a GEICO Estimate of Record dated March 6, 2004; Utah driver licenses issued on July 30, 2004 and March 9, 2009; and an Anpace Consumer Notice to Policyholder dated September 28, 2004.
7. Copies of a Woodland Prescott Account Summary dated January 4, 2005; a Guaranty National Insurance Company Policy Declarations; a Utah Personal Auto Application dated March 13, 2009; a Unitrin Kemper Automobile Policy dated March 7, 2007, a AAA Notice of New Policy dated March 3, 2006; and a Viking Insurance Policy Declarations dated July 6, 2005.

The applicant also resubmitted evidence previously provided.

[REDACTED] states that the applicant has been a member of the Spanish, Spanish Fork Congregation of Jehovah's Witnesses since May 20, 2000, and that according to their records, the applicant was baptized on May 25, 2002. However, [REDACTED] statement has little evidentiary weight or

probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245.9(a)(2)(v). Specifically, [REDACTED] does not explain the origin of the information to which he attests regarding the applicant's membership prior to May 25, 2002, nor does he provide the address where the applicant resided during the period of her involvement with the church.

[REDACTED] Consul General of the Las Vegas Consulate, stated that the applicant is a native of El Salvador. [REDACTED] stated that no adult criminal records were found for the applicant. In this instance, the applicant submitted evidence, including contemporaneous documents, which corroborates her claim of continuous residence and continuous physical presence in the United States during the requisite periods. Consequently, the applicant has submitted sufficient evidence to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the director's findings will be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case is remanded for the purpose of sending the applicant a fingerprint notification form, and affording her the opportunity to comply with its requirements. Thereafter, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

An alien applying for TPS has the burden of proving that he or she meets the requirement. 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 has met this burden.

ORDER: The case is remanded for appropriate action and decision consistent with the foregoing.