



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 04 2007

[EAC 06 355 71738]

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center (VSC), 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 applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 04 002 56117 after the initial registration period had closed. The Director, Texas Service Center, denied that application on February 10, 2004, after determining that the applicant had abandoned her application by failing to respond to a request for additional evidence. She filed a subsequent Form I-821 on February 23, 2005, under receipt number WAC 05 146 70063. The Director, California Service Center, denied the application on April 17, 2006 because the applicant had failed to establish she was eligible for late initial registration. The applicant filed the current application under receipt number EAC 06 355 71738, again after the initial registration period had closed. The VSC Director determined that the applicant had failed to establish he was eligible for late initial registration. The director also found that the applicant had not established that she had been continuously physically present in the United States since January 5, 1999.

On appeal, the applicant submits documentation for consideration and states:

I previously applied for TPS Benefits in initial registration. I had received an approval but address was placed incorrectly on paperwork. I called and was told it was approved. I later refilled and this is why I am appealing because I have the proof that I have been here before TPS was granted.

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 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 El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her application with Citizenship and Immigration Services on September 20, 2006.

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

On appeal, the applicant submits evidence in an attempt to establish her continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the VSC Director's decision to deny the application for TPS is affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since December 30, 1998, and her continuous physical presence in this country since January 5, 1999.

The documentation the applicant submitted included the following:

1. Copies of Certificates of Scholastic Achievement from the Butterfield Junior High School dated May 11, 2000, and May 16, 2001,
2. A copy of the applicant's 2001 Youth Suicide Prevention Poster/Poetry Contest dated March 9, 2001, from [REDACTED] the Attorney General of the State of Arkansas.
3. Copies of the applicant's Blazer Pride Awards from Butterfield Junior High School for the 1999-2000, 2000-2001, and the 2001-2002 school years.
4. A copy of the applicant's permanent elementary record from Van Buren Public Schools in Van Buren.
5. Copies of the applicant's report cards at Van Buren High School in Van Buren, Arkansas, under student ID [REDACTED] for the fourth reporting period of school year 2003, the second and the third reporting periods of school year 2004, and the first and second reporting periods of school year 2005.
6. A copy of the applicant's Van Buren High School diploma earned in Van Buren, Arkansas, in May 2005.
7. A copy of a Certification of Birth for her daughter born on February 3, 2006, in Fort Smith, Arkansas, along with medical bills relating to her birth.
8. A copy of a letter from [REDACTED] of the Inglesia Adventista del Septimo Dia de Fort Smith in Fort Smith, Arkansas, dated July 13, 2006 indicating that the applicant was an active member of the Seventh Day Adventist Hispanic Church of Fort Smith since August 1999 until March 2006 when she moved to Little Rock.
9. A letter from [REDACTED] the Operations Manager of Tortilla Puebla Inc., in Fort Smith, Arkansas. [REDACTED] states that he has know the applicant since 1999 through the church where she held several church posts.
10. An undated letter from [REDACTED] a Foreign Language Instructor at Van Buren High School who sates that the applicant was a student of hers at the high school. [REDACTED] further states that she has known her since 2000 when she first came to teach at the school.

11. A letter from [REDACTED] dated April 12, 2007, who states that the applicant was in her English as a Second Language class at Butterfield Jr. High as a seventh grader in 1999-2000.

It is determined that, on appeal, the applicant has established that she met the criteria described in 8 C.F.R. §§ 244.2(c) concerning continuous physical presence and has overcome the objection of the VSC Director concerning this issue.

An alien applying for TPS 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.