



U.S. Citizenship
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FILE: [REDACTED]
[EAC 04 125 54310]

OFFICE: VERMONT SERVICE CENTER

DATE: OCT 04 2007

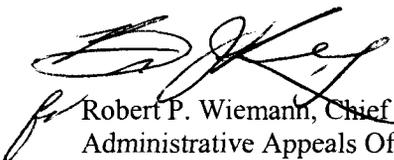
IN RE: Applicant: [REDACTED]

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:

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. Wieman, 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 denied the application because the applicant had failed to establish that she: (1) was eligible for late registration; and (2) 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 a statement and additional evidence, including evidence previously furnished and contained in the record.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant filed a TPS application during the initial registration period on June 7, 2001, under receipt number EAC 01 207 51552. The director denied that application on September 3, 2003, after determining that the applicant had failed to respond to a request dated May 14, 2003, to submit evidence to establish continuous residence and continuous physical presence in the United States during the qualifying periods. The record did not contain evidence that the applicant filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit, within 30 days of the director's decision.

The applicant filed a subsequent Form I-821 application on March 11, 2004. The director denied this second application because it was filed outside of the initial registration period and the applicant had failed to establish her eligibility for filing under the provisions of late registration, and because the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on June 7, 2001. That initial application was denied by the director on September 3, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration/re-registration or as a new filing for TPS benefits.

If the applicant is filing an application for a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on March 11, 2004. Since the initial application was denied on September 3, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 TPS application on March 11, 2004.

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.

In a notice of intent to deny dated April 26, 2004, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director determined that the applicant had failed to respond to her request for evidence and denied the application on August 10, 2004.

On appeal, the applicant submits a statement from her husband, [REDACTED] indicating that the applicant came to the United States on January 4, 2001, and that they were married on November 8, 2002. Also submitted is a copy of [REDACTED] Employment Authorization Card, and a copy of the Commonwealth of Virginia marriage certificate indicating that the applicant and [REDACTED] were married on November 8, 2002.

While the regulations may allow spouses of aliens who are TPS-eligible to file their applications after the initial registration period had closed, the applicant, in this case, was not married to [REDACTED] during the initial registration period as required by 8 C.F.R. § 244.2(f)(2). Furthermore, there is no evidence that [REDACTED] Argueta was an applicant for TPS; rather, [REDACTED] filed an application for asylum (Form I-589) on November 27, 1995, and the applicant was added as a dependent under his asylum case on December 5, 2005. [REDACTED] Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA), was approved on August 23, 2005, and his Form I-589 was subsequently closed. Moreover, the applicant was not added as a dependent under [REDACTED] application until December 5, 2005, after the initial registration period for El Salvadorans had closed. It is noted that the applicant's asylum application as a dependent was administratively closed on September 22, 2006.

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 next 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.

In a notice of intent to deny dated April 26, 2004, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The director determined that the applicant had failed to respond to her request for evidence and denied the application on August 10, 2004.

On appeal, the applicant submits:

1. A statement from [REDACTED] the applicant's husband, indicating that the applicant came to the United States on January 4, 2001, that they were married on November 8, 2002, and that since the applicant's arrival, he has been supporting her economically because she did not work until January 2003. Also submitted is a copy of the marriage certificate and copies of [REDACTED] Authorization Card and State of Virginia driver's license issued on February 24, 2003.
2. A copy of a letter previously furnished from [REDACTED] Associate Pastor of St. Anthony of Padua Catholic Church, dated May 16, 2001, indicating that the applicant has been a parishioner of the church since January 2001.
3. A copy of an envelope addressed to the applicant from Urgente Express postmarked March 9, 2001.
4. Copies of illegible medical reports dated July 14, 2001 and July 17, 2001.
5. A copy of a receipt from "gigante express" dated March 5, 2002.
6. A copy of Inova Alexandria Hospital "pelvic ultrasound" request dated August 24, 2002.
7. A copy of a Verizon billing statement dated November 1, 2002.
8. A copy of a pay statement from J&P Management Services, Inc. for period January 4, 2003 to January 19, 2003.
9. Copies of medical laboratory invoice for services received on February 10, 2004, and medical insurance explanation of benefits dated June 21, 2004.
10. A copy of a letter from Inova Fairfax Hospital verifying that the applicant's daughter was born on August 4, 2004.

The affidavit from [REDACTED] (No. 2 above) 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)(v). Specifically, the reverend does not explain the origin of the information to which he attests, he failed to show inclusive dates of the applicant's membership at the church, and the address where the applicant resided during the membership period.

Although evidence furnished indicates that the applicant was present in the United States on March 9, 2001 (No. 3 above) the record contains no documentary evidence of the applicant's continuous residence since February 13, 2001, and continuous physical presence from July 2001 (No. 4 above) to March 2002 (No. 5 above), and from January 2003 (No. 8 above) to February 2004 (No. 9 above).

Additionally, the director noted in his decision to deny the applicant's initial TPS application (EAC 01 207 51552) on September 3, 2003, that the statement from [REDACTED] submitted with the initial application, indicated that the applicant had been an employee of the establishment since January 1, 2001;

however, the applicant stated on her initial application that her date of entry into the United States was January 4, 2001. It is also noted that [REDACTED] No. 1 above) stated that the applicant did not work until January 2003.

The inconsistencies of the above statements raise questions of credibility. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the evidence she provided. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The applicant has failed to establish that she has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application on these grounds will also be affirmed.

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.