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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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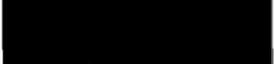
U.S. Citizenship and Immigration Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: NOV 30 2009

[WAC 05 208 74151]

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal.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 record reveals that the applicant filed a TPS application during the initial registration period on April 26, 2005, under receipt number WAC 05 208 74151. The Director, California Service Center, approved that application on February 22, 2007.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8.C.F.R. § 244.14(a)(1).

The director determined that the applicant's re-registration application was approved in error under her husband's A-number because the applicant wrote her husband's A-number on her TPS application. The director also determined the applicant had failed to establish that she had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director also determined that the applicant failed to submit an identity document. The director, therefore, withdrew the applicant's Temporary Protected Status.

On appeal, the applicant states that she thought her lawyer would submit documents in response to the request for additional information. The applicant also 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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 10, 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 her initial TPS application on April 26, 2005.

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 record shows that the applicant filed her TPS application on April 26, 2005. On December 9, 2008, the applicant was provided the opportunity to submit evidence to establish that she was eligible to register for TPS under the late initial registration provision and to submit evidence establishing her identity and nationality and, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application.

The director determined that the applicant failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the application was considered abandoned and withdrawn. It is noted that the director states in his decision that the applicant is eligible for late initial registration as the spouse of a TPS-eligible alien.

On appeal, the applicant states that when she received the December 9, 2008 notice, she thought her lawyer would submit the requested documentation. According to the applicant, she entered the United States on September 5, 2000. The applicant also submits additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. Specifically, the applicant submits a personal statement and statements from [REDACTED] and [REDACTED].

The applicant also submits copies of her Salvadoran passport issued in Coral Gables, Florida on May 24, 2007 and an El Salvadoran Identification Cards.

In her statement, the applicant claims that she does not have any pay stubs or account statements from 2001 because she was unemployed for the first years she was in the United States. The applicant also requests that her case be reviewed so that she can work and help her husband support her family. [REDACTED] and [REDACTED] state that they have known the applicant since January 2001. However, these statements have little 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.

The remaining evidence submitted in support of the TPS application are dated subsequent to the dates required to establish continuous residence and continuous physical presence in the United States. However, these statements have little 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.

The applicant has not submitted sufficient evidence to establish that she has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c).

Consequently, the director's decision to withdraw the applicant's temporary protected status will be affirmed.

The passport and identification cards establish the applicant's nationality and identity. Therefore, this portion of the director's decision will be withdrawn.

In support of her TPS application, the applicant submitted a copy of her marriage certificate and a note with her husband's A-number that established that she was eligible for late initial registration as the spouse of a TPS-eligible alien. However, while USCIS regulations may allow spouses of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. The spouse is still required to meet the residence and physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). As discussed above, the applicant has failed to establish continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the application must be denied on this basis as well.

The applicant's temporary protected status is withdrawn for the above stated reasons, with each considered as an independent and alternative basis for withdrawal. 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.