



U.S. Citizenship
and Immigration
Services

MI

[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:

[Redacted]

AUG 16 2004

APPLICATION:

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

ON BEHALF OF APPLICANT:

[Redacted]

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.


Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Nebraska 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 that she was eligible for filing her TPS application after the initial registration period from March 9, 2001 through September 9, 2002. The director, therefore, denied the application.

On appeal, counsel asserts that the applicant was twice denied TPS, and that she should be granted TPS based on one of her timely initial applications.

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 initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant did file an initial application for TPS on April 17, 2001, during the initial registration period. That application was denied on November 6, 2001, for failure to appear for fingerprinting. Since the application was denied due to abandonment, there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe. The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 9, 2002. The application was returned to the applicant for failure to provide the required fees. The application was resubmitted and properly received on November 14, 2002. The director denied this application on May 19, 2003, because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. 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 was ineligible 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 April 17, 2001. That initial application was denied by the director on November 6, 2001. 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 or as a new filing for TPS benefits.

If the applicant is filing an application as 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 that was properly received at the Service Center on November 14, 2002. Since the initial application was denied on November 6, 2001, 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 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 entry on or prior to February 13, 2001, 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

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 record of proceeding confirms that the applicant filed his 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, he 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. *See* 8 C.F.R. § 244.2(g).

On April 4, 2003, 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 nationality and identity, her residence in the United States since February 13, 2001, and her physical presence in the United States from March 9, 2001 to the date of filing the application. The applicant, in response, provided evidence of her nationality and identity and also furnished evidence in an attempt to establish her continuous residence and physical presence in the United States. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, counsel contends that the applicant applied twice for TPS during the initial registration period, but was denied due to CIS administrative error. According to counsel, the applicant could not meet the requirements for late registration, but should be granted TPS under one of her timely initial applications. Contrary to counsel's claims, only one application was timely filed, but that application was denied on November 6, 2001, for failure to appear for fingerprinting. The subsequent application was returned to the applicant, as discussed above, for her failure to include the proper fees.

As pointed out by the director, and as stated above in 8 C.F.R. § 244.2(f)(1), an applicant is eligible for TPS if he **registers** for TPS during the initial registration period announced by public notice in the *Federal Register*. According to 8 C.F.R. § 244.1, "**register**" means to "**properly file**" a completed application, **with proper fee**, for Temporary Protected Status during the registration period designated under 244(b) of the Act. According to 8 C.F.R. § 103.2(a)(7), "**properly filed**" means:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204, part 245 or part 245a of this chapter, shall be regarded as **properly filed** when so stamped, if it is signed and executed and the required filing fee is attached or waiver of the filing fee is granted. (Emphasis added.)

Counsel's claim that the applicant was denied TPS because of administrative error is without merit. The record reflects that the applicant failed to register for TPS during the qualifying period. Additionally, the applicant has not submitted any evidence that she has met any of the criteria for late registration described in 8 C.F.R. § 244(f)(2). The director's decision to deny the application for temporary protected status will be affirmed.

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.