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FILE:



Office: VERMONT SERVICE CENTER

Date: **DEC 05 2005**

[EAC 04 160 54637]

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 office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
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 failed to establish she was eligible for late registration. The director also found that the applicant had failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement and additional evidence.

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 did file an initial application for TPS during the initial registration period. That application was denied on April 25, 2003, for failure to respond to a request for evidence to establish her eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant filed a request for a motion to reopen within 30 days from the date of the denial. The director dismissed the motion on August 20, 2003, because it did not meet the requirements for a motion to reopen or a motion to reconsider.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 30, 2004. The director denied this second application, in part, 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 her explanation of this basis for denial. While the director found the applicant ineligible for TPS, in part, 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 July 9, 2001. That initial application was denied by the director on April 25, 2003, and the applicant's motion to reopen the matter was dismissed on August 20, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a final 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 on April 30, 2004. Since the initial application was denied on April 25, 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 applicant who is a national of a foreign state 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 § 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.

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. 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 granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed her current Form I-821 with Citizenship and Immigration Services (CIS) on April 30, 2004.

The burden of proof is upon the applicant to establish that she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from 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 proceedings confirms that the applicant filed her current TPS 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.

On June 1, 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 applicant was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The record does not contain a response from the applicant.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on September 1, 2004.

On appeal, the applicant submits evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States.

However, this evidence does not mitigate the applicant's failure to file the current Form I-821, 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 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant claimed on her Form I-821 that she first entered the United States on November 1, 2000.

As stated above, the applicant was requested on June 1, 2004, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The record does not contain a response from the applicant.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application.

On appeal, the applicant submits the following:

1. a photocopy of correspondence from the Internal Revenue Service (IRS) dated March 25, 2002, regarding the tax period ending December 31, 2001;
2. photocopies of the applicant's 2002 IRS Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, and her 2002 IRS Forms W-2, Wage and Tax Statement, from [REDACTED] and from [REDACTED];
3. photocopies of the applicant's 2003 IRS Form 1040EZ and her 2003 IRS Form W-2 from MV Corp. Inc.;
4. photocopies of cover letters dated August 1, 2001 and January 11, 2003, respectively, enclosed with the applicant's Employment Authorization Cards;
5. a photocopy of a New York State birth certificate indicating that [REDACTED] was born to the applicant in Islip, New York, on March 3, 2004;
6. photocopies of earnings statements from [REDACTED] reflecting a hire date of October 24, 2001, for the pay periods from October 22, 2001 through August 11, 2003;
7. photocopies of two ADP pay statements: one from Summit Plastics, Inc., in Ronkonkoma, New York, for the pay period ending October 5, 2001, and one and from [REDACTED] Inc., in Ronkonkoma, New York, for the pay period ending October 19, 2001;
8. a photocopy of a receipt for payment on account dated March 10, 2003, from the [REDACTED] County Department of Health Services, Suffolk County, New York; and,
9. photocopies of money transfer receipts dated February 14, 2003; March 3, 2003; May 2, 2003; May 16, 2003; June 6, 2003; and July 10, 2003.

The applicant has submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States since July 3, 2001, the filing date of her prior Form I-821, but she has not submitted any evidence to establish her continuous residence in the United States from February 13, 2001 to July 3, 2001, or her continuous physical presence in the United States from March 9, 2001 to July 3, 2001.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will 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.