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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 13 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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.

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

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 parole; 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 record indicates that the applicant filed a Form I-589, Request for Asylum in the United States, on September 28, 1992. Her application was denied on April 5, 1994. The Supervisory Asylum Officer, Anaheim California, issued a Form I-221, Order to Show Cause and Notice of Hearing, on April 5, 1994. There is no indication in the record that a removal hearing was ever held.

On January 16, 1998, [REDACTED] the applicant's brother, filed a Form I-130, Petition for Alien Relative, on the applicant's behalf as the sister of a United States citizen. The petition was approved on August 23, 2001. There is no indication in the record that the applicant ever filed an adjustment application or applied for an immigrant visa at a United States embassy or consulate in El Salvador.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. On May 21, 2001, the applicant attempted to file a Form I-821, Application for Temporary Protected Status, with the California Service Center; however, the applicant's check for the application fees bounced, and she failed to respond to a request for proper payment. The application was, therefore, rejected by the California Service Center on December 11, 2001, because she failed to submit the correct application fees. The applicant did not resubmit her application during the initial registration period. The current application was not filed with Citizenship and Immigration Services (CIS) until September 26, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 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 director determined that the applicant had failed to establish she was eligible for late registration and denied the application on March 2, 2004.

On appeal, the applicant reiterates her claim of continuous residence in the United States since 1992. She states, "I attached to this brief the copy of my application for TPS dated 5/16/01. . . ." She submits a copy of the Form I-821 that was rejected by the California Service Center on December 11, 2001, because of a bounced check. Since this application was rejected, the applicant's claim that she filed a timely Form I-821 during the initial registration period cannot be accepted.

It is noted that the applicant was the beneficiary of an approved Form I-130 filed on her behalf under section 203(a)(4) of the Act. However, individuals who are awaiting preference allocation for an immigrant visa under section 203 of the Act are not eligible for late registration under 8 C.F.R. § 244.2(f)(2). The applicant has not submitted any evidence to establish that she has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, 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.