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FILE: [REDACTED]
[EAC 03 061 51542]

Office: VERMONT SERVICE CENTER

Date: JUN 24 2005

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.

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 (AAO) 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 her qualifying continuous physical presence in the United States during the requisite time period.

On appeal, the applicant submits a brief statement and additional documentation.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 El Salvadorans was from March 9, 2001, through September 9, 2002.

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 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 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 to be addressed in this proceeding is whether the applicant is eligible for late registration.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, 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).

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

The record reveals that the applicant filed a first Form I-821, Application for Temporary Protected Status, on March 19, 2001, during the initial registration period. At the time of filing the application, the applicant listed her address as [REDACTED] Mattapan, Massachusetts. On June 16, 2001, the director requested the applicant to appear for fingerprinting, required in connection with her application. The notice to appear was mailed to the applicant at the address indicated on her Form I-821. The applicant failed to appear as requested.

If an individual requested to appear for fingerprinting does not appear, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The director denied the applicant's first Form I-821 on October 10, 2001, due to abandonment because the applicant failed to appear for fingerprinting. The denial notice was also forwarded to the applicant at the address indicated on her Form I-821. 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 director's denial. The applicant did not file a motion to reopen during the requisite timeframe.

On January 18, 2002, a letter was received from the applicant stating that she had moved from [REDACTED] Massachusetts, to [REDACTED] Massachusetts. On March 8, 2002, the director notified the applicant that her record had been up-dated to reflect her new address.

On September 5, 2002, in response to an inquiry concerning her first Form I-821, the director notified the applicant that because she had not responded to the request of June 16, 2001, her application had been denied. The director advised the applicant that her only alternative was to file a new application with a new fee.

Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision on that application is rendered, must be considered as either a request for annual re-registration or as a new filing for TPS benefits. If an applicant is filing an application for annual re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must re-register annually. In addition, the applicant must continue to maintain the conditions of TPS eligibility. 8 C.F.R. § 244.17.

The applicant subsequently filed the instant Form I-821 on October 24, 2002. On the application, the applicant indicated that it was her initial application for TPS.

On June 11, 2003, the director requested the applicant to submit evidence to establish her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit the required photographs and evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In his request, the director specifically noted:

[CIS] records indicate that your initial I-821 was denied on October 10, 2001, due to abandonment. To be eligible for TPS you had to have filed a new application within the 6- day period following that date or anytime before September 9, 2002, the date the initial registration period had expired.

The record reflects that, in response to the director's request, the applicant submitted photocopies of the following documentation:

1. A medical record from Brigham and Women's Hospital, Boston, Massachusetts, stating that the applicant gave birth to [REDACTED] on April 18, 1995;
2. The birth certificate [REDACTED];
3. A letter from Children's Hospital, Boston, Massachusetts, stating that [REDACTED] was seen at the Ophthalmology/Main clinic on January 23, 1999;
4. A letter, dated July 28, 1999, from Brookside Community Health Center, Jamaica Plains, Massachusetts, stating that the applicant had been a patient since October 31, 1994;
5. A medical record from Brigham and Women's Hospital, showing that the applicant was examined on April 7, 2000;
6. A medical record from Brigham and Women's Hospital, stating that the applicant gave birth to [REDACTED] on June 6, 2000;
7. The birth certificate of [REDACTED];
8. A letter from the Social Security Administration, Roslingdale, Massachusetts, stating that the applicant applied for a social security card on May 16, 2001.

The director denied the 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. The director also found that the applicant had failed to submit sufficient evidence to establish her continuous physical presence in the United States from March 9, 2001, through to the date of filing the application on October 24, 2003.

On appeal, the applicant states that she has resided in the United States since April 15, 1994, and has two children born in the United States. In support of the appeal, the applicant submits photocopies of the following additional documentation:

9. The identification page of her El Salvadoran passport, showing that it was issued in Boston, Massachusetts, on May 14, 2004;
10. Her Employment Authorization Card (EAD), issued on April 27, 2001;

11. A Costco identification card, issued in December 2000; and,
12. A Verizon account statement for the period February 11, 2002, through March 10, 2002.

The applicant's first Form I-821 was properly filed during the initial registration period. However, that application was denied and the applicant failed to submit a motion to reopen and reconsider that decision. The instant Form I-821 was filed after the initial registration period had expired. Since a decision had been rendered on the first application, the instant application can only be considered as an application for late registration. The applicant has failed to establish that she satisfied any of the grounds for late registration detailed in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant failed to establish her eligibility for late registration will be affirmed.

The second issue to be addressed in this proceeding is whether the applicant has established her qualifying continuous physical presence in the United States from March 9, 2001, through to the date of filing her application on October 24, 2003.

Based on a review of the record, it is concluded that the applicant has submitted a variety of credible, contemporaneous evidence (Nos. 1 through 12, above) to establish her qualifying continuous physical presence in the United States during the requisite time period. Consequently, the director's decision to deny the application for this reason will be withdrawn.

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. With regard to her eligibility for late registration, the applicant has failed to meet this burden.

ORDER: The appeal is dismissed.