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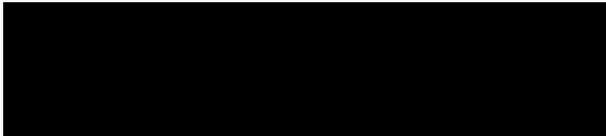
Office: CALIFORNIA SERVICE CENTER

Date: JUN 29 2005

IN 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:



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 claims to be a native of Mexico 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 was ineligible for TPS because: (1) her country of nationality, Mexico, is not a designated foreign state for TPS; and (2) her application was filed after the initial registration period for nationals of El Salvador.

On appeal, counsel submits a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

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. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The first issue in this proceeding is whether the applicant is a national of El Salvador.

The record of proceeding contains the applicant's birth certificate, issued in Mexico, indicating that the applicant was born in Mexico on July 22, 1989, to an El Salvadoran mother and a Mexican father. The TPS application indicates that the applicant entered the United States without inspection in January 1990, and that her country of citizenship is "Mexico/El Salvador."

On appeal, counsel asserts that although the applicant was born in Mexico, she is a national of El Salvador because "at birth she obtained El Salvador citizenship through her El Salvador-born mother." She further asserts that "under El Salvador law, an individual born outside of El Salvador is an El Salvadoran citizen if he or she is born to an El Salvadoran citizen and is registered with the El Salvador government." Counsel states that proof of such registration is being obtained by the applicant but cannot be furnished at this time due to the short amount of time given for an appeal, and that documentation will be forwarded as soon as it is received. As of this date, however, no additional evidence has been provided.

The applicant has failed to establish that she is a national of El Salvador. Accordingly, it is concluded that the applicant is a native and citizen of Mexico, and that her country is not a designated foreign state under section 244 of the Act. Therefore, the applicant does not meet the eligibility requirements of being a national of a state designated under section 244(b) of the Act. The director's decision to deny the application for this reason will be affirmed.

The second issue in this proceeding is whether the applicant was eligible for late registration.

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 application on September 25, 2003.

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).

In order to qualify for late registration, the applicant must provide evidence that, at the time of the initial registration period of March 9, 2001, through September 9, 2002, she met one of the criteria described in 8 C.F.R. § 244.2(f)(2) (listed above).

The director denied the application on March 30, 2004, after determining that CIS records show that the applicant filed her initial application on September 25, 2003.

On appeal, counsel asserts that the applicant timely filed her application during the initial registration period, and that it was received at the Service Center on September 9, 2002. To support her claim, she submits a copy of an envelope postmarked September 4, 2002, and a receipt date of September 6, 2002, was stamped on the envelope. The return address on this envelope shows the names of the applicant's mother and the applicant; however, it is not clear in the record whether the applicant's TPS application was mailed in this envelope. Contained in the record of proceeding is an envelope in which the application appears to have been mailed. The envelope was postmarked September 17, 2003, and was stamped received on September 25, 2003. The application was also stamped received at the Service Center on September 25, 2003.

The applicant provided with her application a copy of an employment authorization card issued to the applicant's El Salvadoran mother on August 20, 2001, as evidence that her mother is an alien currently eligible for TPS. Therefore, the applicant has met the criteria for late registration as the child of an alien currently eligible for TPS, as described in 8 C.F.R. § 244.2(f)(2)(iv). Accordingly, the director's decision to deny the application for this reason will be withdrawn.

However, while regulations may allow children of aliens who are TPS-eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. As indicated above, the applicant has failed to establish that she is a national of El Salvador. Furthermore, although the applicant indicated that she entered the United States in January 1990, she failed to submit any evidence, with her TPS application or on appeal, to establish that she has continuously resided in the United States since February 13, 2001, and that she has been continuously physically present in the United States since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application 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.