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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MI



FILE:



Office: Vermont Service Center

Date: **MAR 31 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.

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. A motion to reopen was dismissed by the director. The matter is now before the Administrative Appeals Office (AAO) on a subsequent motion to reopen. The motion to reopen will be granted and 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 on December 11, 2003, because the applicant failed to establish she was eligible for late registration. A subsequent motion to reopen from the director's decision was dismissed on July 21, 2004, after the director concluded that the applicant had failed to establish that she was eligible for late registration.

On August 23, 2004, the applicant submitted a subsequent motion to reopen. On the motion to reopen, the applicant submitted some documentation in an attempt to establish her eligibility for 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 designated by the Attorney General 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 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.

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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS), on September 2, 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 December 11, 2003. On February 23, 2004, the applicant filed an appeal on the director's decision to deny her application; however, that appeal was not filed within the requisite time frame. The director, therefore, rejected the appeal; however, the director treated it as a motion instead. Subsequently, the motion from the director's decision was dismissed on July 21, 2004, after the director concluded that the applicant had failed to establish eligibility for TPS late registration.

On August 23, 2004, the applicant submitted a subsequent motion to the director's July 21, 2004 decision. On the subsequent motion, the applicant submitted the following documentation: a copy of an Approval Notice dated July 27, 2002, from the Service extending her temporary stay in the United States to June 24, 2002; copies of the pages from her passport reflecting that she was issued a B1/B2 visa to the United States on October 4, 1999, in San Salvador, El Salvador. However, 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 decision to deny the application for TPS will be affirmed.

The record of proceedings contains copies of the applicant's passport reflecting that she entered El Salvador on February 1, 2001. In addition, according to CIS systems, the applicant returned to the United States on June 25, 2001, at Atlanta, Georgia. Therefore, the applicant could not have met the requirements that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001. She has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the application will also be denied for these reasons.

An alien applying for TPS 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.