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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

MI



FILE: [REDACTED]  
[EAC 04 158 54139]

Office: VERMONT SERVICE CENTER

Date: NOV 17 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: 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 "R. 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 on September 14, 2004, because the applicant failed to establish that she is eligible for late registration. The director also denied the application because the applicant 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.

The applicant filed an appeal from the denial decision on November 6, 2004.

An appeal that is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

Coupled with three days for mailing, the appeal, in this case, should have been filed on or before October 18, 2004. Since the applicant did not file her appeal with the Vermont Service Center until November 6, 2004, the appeal was not timely filed. However, the director erroneously stated in his decision that the applicant failed to respond to the Notice of Intent to Deny dated June 18, 2004. The applicant did, in fact, respond to the notice, and her response was received at the Vermont Service Center on August 30, 2004, later than the response deadline specified in the Notice of Intent to Deny, but prior to the issuance of the Notice of Decision on September 14, 2004. Therefore, a full decision will be issued based on the merits of the case.

On appeal, the applicant submits a brief 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 May 27, 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 could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent 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 the basis for denial. While the director found the applicant ineligible for TPS 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 June 25, 2001. That initial application was denied by the director on May 27, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a 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 May 27, 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 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 18, 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. In response to the notice, the applicant stated that she had an application for change of status, adjustment of status, asylum, voluntary departure, or relief from removal pending before CIS. She submitted evidence relating to her residence and physical presence in the United States, but she did not submit any evidence to corroborate her assertion that she had a pending application for change of status or adjustment of status before CIS during the initial registration period.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on September 14, 2004.

On appeal, the applicant repeats her assertion that she qualifies for late registration because she had an application for change of status or adjustment of status, asylum, voluntary departure, or withholding of removal pending before CIS during the initial registration period. CIS records contain no indication that the applicant had such an application pending before CIS during the initial registration period.

It appears the applicant may be attempting to claim that she qualifies for late initial registration because her prior Form I-821 was pending during the initial registration period. However, having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2).

The applicant, on appeal, submits evidence relating to her residence and physical presence in the United States.

However, this evidence does not mitigate the applicant's failure to file her 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 prior Form I-821 that she first entered the United States in 1993. She submitted the following evidence:

1. a letter dated October 20, 2003, from [REDACTED] stating that he has known the applicant since January 2000;

2. a letter dated June 18, 2001, from Father [REDACTED] Pastor of Most Holy Redeemer Parish in East Boston, Massachusetts, stating that the applicant has been a member of his parish for "more than one year;"
3. a photocopy of a notice dated June 20, 2001, from the East Boston Neighborhood Health Center in East Boston, Massachusetts, stating that the applicant should be excused from work until June 22, 2001;
4. a letter dated October 16, 2003, from [REDACTED] Payroll Clerk, [REDACTED] in Melrose, Massachusetts, stating that the applicant has been an employee of [REDACTED] Team since January 25, 2000.

As stated above, the applicant was requested on June 18, 2004, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following:

5. photocopies of 41 ADP earnings statements from [REDACTED] Inc., for the pay periods from November 24, 2000 through November 27, 2002.

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:

6. photocopies of ADP earnings statements from [REDACTED] Inc., previously submitted in response to the Notice of Intent to Deny.

The applicant indicated on both her prior and her current Form I-821 that she first entered the United States in 1993. She indicated on her prior Form I-821 that she was married and had three children living in El Salvador. She indicated on the current Form I-821 that she is single and has three children living in El Salvador. The applicant indicated on her prior Form I-821 that she did not have a Social Security number. She listed her Social Security number on her current Form I-821 as [REDACTED].

The applicant's Social Security number on the ADP earnings statements for the period from January 30, 2002 through November 27, 2002, is listed as [REDACTED] and these statements all reflect that the applicant is single and claiming no exemptions for federal income tax purposes. The ADP earnings statements for the period from November 29, 2000 through January 16, 2002, list the applicant's Social Security number as [REDACTED] and indicate that the applicant is married and claiming five exemptions for federal income tax purposes. The applicant has not provided any explanation for these discrepancies in her Social Security number and marital status as it appears on these earnings statements.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve

any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The letter from Father [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the letter is not in affidavit format, and Father [REDACTED] does not provide the exact dates of the applicant's membership in his parish or the address where the applicant resided during the period of her involvement with the church.

The employment letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit format, and Ms [REDACTED] does not provide any information regarding the applicant's duties, the address where the applicant resided during the period of her employment, or periods of layoff, if any.

The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence and continuous physical presence in the United States during 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.