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



U.S. Citizenship
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Services

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FILE: [REDACTED]
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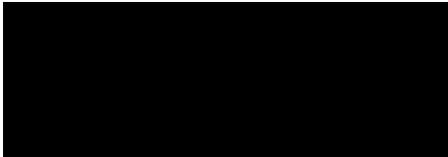
OFFICE: NEBRASKA SERVICE CENTER

Date: JUN 30 2006

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.

Cindy N. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The director denied the application because the applicant failed to establish she was eligible for late registration.

On appeal, counsel asserts the applicant's claim of 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 of a 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 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.

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. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on October 6, 2003.

It is noted that the applicant filed an earlier application for TPS on November 4, 2002. That application was denied on May 30, 2003, because it was filed after the closing of the initial registration period and the applicant had failed to establish her eligibility for late registration.

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.

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).

On December 1, 2003, 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 continuous physical presence in the United States from February 13, 2001, to the date of filing. Counsel, in response, asserted the applicant's eligibility for late registration. Counsel provided evidence in an attempt to establish the applicant's qualifying residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on February 4, 2004. On motion to reopen, counsel again asserted the applicant's eligibility for late registration. The director granted the motion, but again denied the application on April 5, 2004.

On appeal, counsel once again asserts the applicant's eligibility for late registration.

Counsel has maintained that the applicant is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv) because she is the "child of an alien currently eligible to be a TPS registrant." Counsel concludes that the applicant's mother is "eligible to be a TPS registrant" because she satisfies the TPS requirements described in 8 C.F.R. §§ 244.2(a) through (e). Counsel's interpretation of the regulation, however, is erroneous in that in order for an alien to be "eligible to be a TPS registrant" she must satisfy all of the requirements for TPS, including 8 C.F.R. § 244.2(f).

Since the applicant's mother has not filed an application for TPS, she cannot be considered to be "eligible to be a TPS registrant"; therefore, the applicant is not eligible for TPS under 8 C.F.R. §§ 244.2(f)(2)(iv). Nevertheless, CIS computer records confirm that the applicant was listed as a dependant on her mother's Form I-589, Application for Asylum, which was pending until December 10, 2003. The applicant filed the current application for TPS before that status expired. Therefore, the applicant has established her eligibility for late registration under 8 C.F.R. § 244.2(f)(2)(ii). The applicant has submitted sufficient evidence to establish that she satisfies the requirements for TPS described in 8 C.F.R. §§ 244.2(a) through (e) above. There are no known grounds of ineligibility; therefore, the director's decision will be withdrawn and the application will be approved.

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 met this burden.

ORDER: The appeal is sustained and the application is approved.