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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: Nebraska Service Center Date: MAR 27 2006
[LIN 03 270 51816]

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:

[redacted]

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, Nebraska 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 because the applicant failed to establish she was eligible for late registration. The director also denied the application because the applicant failed to establish her "continuous residence since February 13, 2001," and her continuous physical presence since March 9, 2001.

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 [LIN 02 108 51599] during the initial registration period. That application was denied on July 2, 2002, because the applicant failed to establish her "residence in the United States since February 13, 2001." The applicant, through counsel, filed an appeal to the director's decision on August 12, 2002. However, since the appeal was untimely filed, the director treated the appeal as a motion to reopen. The director rejected the motion to reopen on October 23, 2002.

The applicant filed her second Form I-821, Application for Temporary Protected Status, [LIN 03 052 50202] on November 14, 2002. That application was denied on May 22, 2003, because the applicant failed to establish her "residence since February 13, 2001." The applicant, through counsel, filed an appeal to the director's decision on June 26, 2003. The appeal was dismissed by the director of the AAO on August 2, 2004, because the applicant failed to establish her "residence and physical presence" in the United States.

The applicant filed a third Form I-821, Application for Temporary Protected Status, [LIN 03 270 51816] on September 15, 2003. This application was denied on January 2, 2004, because the application 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. The director also denied the application because the applicant failed to establish her continuous residence and continuous physical presence during the requisite time periods.

Since the applicant did file an application during the initial registration period, the director erred in his 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 [LIN 02 108 51599] was properly filed on February 11, 2002. That initial application was denied by the director on July 2, 2002. Any Form I-821 applications 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 the instant Form I-821 on September 15, 2003. Since the initial application was denied on July 2, 2002, this 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 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 § 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. 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 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 November 3, 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 director also requested the applicant to submit a copy of her passport and a copy of her current photo identification. In addition, the applicant was requested to submit evidence to establish her "residence in the United States since February 13, 2001," and her continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted copies of her El Salvadoran passport and personal identification card as well as some evidence relating to her continuous physical presence and continuous residence in the United States. The applicant also submitted copies of her marriage certificate along with an English translation as well as copies of her husband's Employment Authorization and Social Security cards. The director determined that the applicant had failed to establish her eligibility for TPS late registration, her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. Therefore, the director denied the application on January 2, 2004.

On appeal, counsel, on behalf of the applicant, states that the applicant qualifies for TPS late registration because her spouse has been granted TPS. Counsel also states that the applicant has already provided evidence to demonstrate her continuous presence in the United States. In addition, counsel indicates that she intends to file a separate brief and supporting documentation to the AAO within 30 days. However, as of the date of this decision, no additional evidence has been provided. Therefore, the record will be considered complete.

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 application after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The applicant claims on the Form I-821, Application for Temporary Protected Status, that she married on May 12, 2000, in El Salvador. The applicant also submitted a copy of her marriage certificate along with an English translation. A review of the marriage certificate reflects that the applicant was married to on May 12, 2000, in San Miquel, El Salvador. Further, the CIS computer systems reflect that was granted temporary protected status. As such, the applicant has established that she has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, this portion of the director's decision will be withdrawn.

However, in addition to meeting the criteria for late registration, the applicant must also establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing her application.

A review of the record of proceedings reflects that the director of the AAO had stated that the applicant had provided conflicting evidence regarding her qualifying residence and presence in the United States. In particular, in his decision dated August 2, 2004, he noted that the applicant had previously submitted letters from acquaintances and receipts purporting that the applicant had been in the United States since November and December 2000. However, the applicant stated on her applications for temporary protected status and employment authorization that she did not enter the United States until January 10, 2001. In addition, a further review of the record reflects the applicant submitted a copy of her El Salvadoran personal identification card (Cedula) issued to her on August 21, 2001, in El Salvador. Therefore, the applicant could not have met the requirements that she had continuously resided in the United States since February 13, 2001, and she had been continuously physically present in the United States from March 9, 2001. The applicant has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the applicant remains ineligible and the director's decision 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 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.