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FILE:

[WAC 05 214 75533]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 30 2006

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:

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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center (CSC). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 record reveals that on October 9, 2001, during the initial registration period, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 02 035 56688. The Texas Service Center (TSC) Director initially denied that application due to abandonment on December 8, 2003. On January 2, 2004, the applicant through counsel filed a motion to reopen the denial decision. The TSC Director approved the motion and vacated the denial decision. After requesting additional evidence, the TSC Director subsequently denied the application on January 7, 2005, after determining that the applicant had failed to establish her continuous residence and continuous physical presence in the United States during the requisite periods. The applicant through counsel on January 20, 2005, filed a timely appeal to the denial decision. That appeal is being dismissed by the Chief of the AAO under separate cover.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 2, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The director also denied the applicant's employment authorization because her TPS application had been denied and she did not have a pending or approved TPS application.

On appeal, counsel for the applicant states that denial of the TPS application and employment authorization was improper while the applicant had a pending appeal on the denial of her initial TPS application. In support of the appeal, counsel submits CIS receipt notices for the January 20, 2005 appeal, and the notice reflecting that the appeal was forwarded to the AAO.

Counsel is correct that the applicant had a pending appeal at the time the CSC Director rendered the denial decision on the current TPS application. Therefore, the applicant was eligible for temporary treatment benefits at that time. As noted above, the prior appeal was dismissed by the Chief of the AAO under separate cover. Therefore, the applicant currently does not have a pending or approved prior TPS application.

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.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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 initial registration period for El Salvadorans was from March 9, 2001 to September 9, 2002. The record reveals that the applicant filed the current application with CIS on May 2, 2005.

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).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Although the applicant submitted a TPS application during the initial registration period, that application was denied on January 7, 2005, and the appeal is dismissed under separate cover. 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. Since the initial application was denied, this subsequent application can be considered as a late registration. However, because the applicant has not established her eligibility for late initial registration, this application also must be denied for this reason.

In addition, the applicant also has failed to submit sufficient evidence to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. The regulations under 8 C.F.R. § 244.9(a)(2), do not provide that affidavits alone are sufficient to establish an applicant's continuous residence and continuous physical presence in the United States. The affidavits have been notarized by counsel, and are not supported by any other corroborative evidence for the initial portions of the requisite periods. The applicant claims to have lived in the United States since November of 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these affidavits; however, no such evidence has been provided. The remainder of the submitted evidence is dated as of mid-2002. Therefore, the applicant has not met the requirements under 8 C.F.R. § 244.2(b) and (c) and the application must also be denied for these reasons.

Beyond the decision of the director, the record contains only a photocopy of a birth certificate, with English translation. The applicant failed to submit photo identification or a national identity document from her country of origin bearing a photograph and/or fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provisions of 8 C.F.R. § 244.9(a)(1). Therefore, the application must also be denied for this reason.

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.