



U.S. Citizenship
and Immigration
Services

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FILE:

[WAC 05 133 72384]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAY 30 2006

IN RE:

Applicant:

APPLICATION:

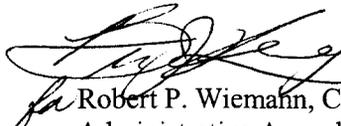
Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

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.


Robert P. Wiemahn, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and 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 the applicant filed an initial TPS application on November 18, 2002, under Citizenship and Immigration Services (CIS) receipt number WAC 03 057 52317. The director denied that application on September 30, 2004, because the applicant failed to establish that she was eligible for late initial registration. On October 29, 2004, the applicant filed an appeal from the denial decision. The AAO reviewed the record of proceeding and noted that the applicant had provided no evidence to establish that she had met any of the criteria for late registration. The AAO further noted that the record of proceeding did not contain any evidence to establish that the applicant has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Therefore, the AAO dismissed the appeal on August 29, 2005.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 10, 2005, and indicated that she was re-registering for TPS. The director denied the re-registration application on April 26, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that her initial TPS application is still pending because she has not received a decision regarding the Notice of Appeal she filed on October 29, 2004.

A review of the record of proceeding, and as addressed above, it is noted that during the pendency of the Notice of Appeal filed on October 29, 2004, the applicant filed the re-registration application on February 10, 2005, the director denied the re-registration application on April 26, 2005, and the applicant appealed this decision of the director on May 24, 2005. In the interim, the AAO adjudicated and subsequently denied the initial TPS application on August 29, 2005. Therefore, as of August 29, 2005, and prior to the adjudication of the applicant's present appeal regarding her re-registration application, the applicant's initial TPS application was no longer pending. A remand of this case to the director based on a premature denial of the re-registration application would not overcome the denial of the applicant's initial TPS application, as the record still is devoid of any evidence to establish that the applicant was eligible for late initial application, and that she has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

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, through September 9, 2002. The record reveals that the applicant filed the current application with CIS on February 10, 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 she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

Additionally, as previously noted, the record of proceeding did not contain any evidence to establish that the applicant has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). It is further noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for these reasons.

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.