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

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[redacted]

FILE: [redacted] Office: California Service Center Date: NOV 02 2006
[WAC 05 217 73164]

IN RE: Applicant: [redacted]

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

ON BEHALF OF PETITIONER: 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. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated 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 a late initial TPS application on May 5, 2005, under CIS receipt number WAC 05 217 73164. The director denied that application on April 10, 2006, because the applicant failed to establish eligibility for late registration, her continuous residence and her continuous physical presence in the United States during the requisite period.

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 as designated by the Attorney General 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 section 244.3;

(e) Is not ineligible under 8 C.F.R. § 244.4; and

(f) (1) Registers for TPS 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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

(1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 her initial application with Citizenship and Immigration Services (CIS) on May 5, 2005.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On February 9, 2006, the applicant was provided the opportunity 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, in a notice of intent to deny issued by the director, to submit evidence establishing her continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The director noted that the notice of intent was not returned as undeliverable. The director determined that the applicant failed to establish her continuous residence, continuous physical presence, and eligibility for late initial registration.

On appeal, the applicant states only that she did not receive the notice of intent to deny, and asserts that she is eligible for late initial registration for TPS because she a minor child of a TPS registrant. It is noted that the notice was sent to the applicant's latest address which she still maintains at time of appeal. With the appeal, in an attempt to establish her eligibility for late initial registration, the applicant submitted a photocopy of an EAD card for her father; an TPS approval notice for her father, issued on September 24, 2002; and a copy of her birth certificate, in Spanish, accompanied with an English translation. While an applicant who is the spouse or child of a TPS recipient may be eligible for late initial registration, the applicant must meet all of the requirements for TPS. It is noted that the record reflects, as stated by the applicant in her TPS application, that she entered the United States on March 27, 2003, after the registration period. Therefore, the applicant has not established that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) and has not established her continuous residence and continuous physical presence in the United States during the requisite periods. Consequently, the director's decision to deny the application for temporary protected status on these grounds will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish her nationality and identity. The applicant has furnished a copy of a birth certificate and English translation; however, she has not submitted a national identity document from her country bearing a photograph and or/fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provision of 8 C.F.R. § 244.9(a)(1). Therefore, the application must 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.