



U.S. Citizenship
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FILE:

[EAC 03 076 52201]

Office: VERMONT SERVICE CENTER

Date: OCT 03 2006

IN RE:

Applicant:

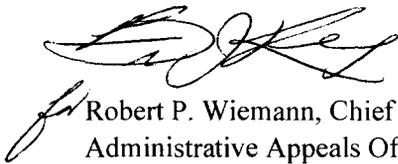
APPLICATION:

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The applicant filed a motion to reopen, which was denied by the AAO. The matter is now before the AAO on a second motion to reopen. The motion to reopen 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.

On July 16, 2003, the applicant filed an appeal of the director's decision to the AAO. On October 1, 2004, the AAO affirmed the director's decision and dismissed her appeal, finding the applicant failed to establish she was eligible for late registration.

On December 15, 2004, the applicant, through counsel, submitted a motion to reopen to the AAO. In the motion to reopen, the applicant claimed she was in the United States in a valid non-immigrant status during the initial registration period. The applicant previously submitted a copy of her Form I-94, Record of Arrival, demonstrating that she was admitted as a non-immigrant from July 16, 1998 until July 15, 2001. On February 6, 2006, the AAO affirmed the previous decision dismissing the appeal, finding the motion to reopen was untimely.

On March 6, 2006, the applicant, through counsel, filed a motion to reopen and reconsider the previous decision by the AAO. On appeal, the applicant, through counsel, makes the same arguments as in the previous motion to reopen. It is noted that the applicant again failed to submit any evidence that she is eligible for late registration.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant's motion to reopen consists of a copy of her Form I-94, Record of Arrival, which demonstrates that she was admitted into the United States as a non-immigrant from July 16, 1998 until July 15, 2001. While the applicant's non-immigrant status would render her eligible for late registration, she had to file her TPS application within a 60-day period immediately following the expiration of her non-immigrant status. Since her status expired on July 15, 2001, her 60-day period for late registration expired on September 14, 2001, almost one year before the end of the initial registration period. The applicant filed her application over a year later on October 15, 2002. The primary basis for the denial of the application and the appeal was the applicant's failure to file her Application for Temporary Protected Status within the initial registration period or to establish her

eligibility for late registration. The current motion does not address the applicant's eligibility for late registration. As such, the issue on which the underlying decisions were based has not been addressed or overcome on motion.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated October 1, 2004, is affirmed.