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U.S. Citizenship
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DEC 06 2007

[REDACTED]

FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE:

[EAC 06 360 87586 –
as it relates to
WAC 02 216 54187 and WAC 05 217 71571]

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, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center (CSC). A re-registration application was also denied by the CSC Director. Both applications will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO). A subsequent application was denied by the Director, Vermont Service Center (VSC), and is currently on appeal before the AAO. The appeal will be sustained, and the applications approved.

The applicant is a 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 shows that the applicant filed her first application for TPS at the CSC during the initial registration period for El Salvadoran nationals on June 4, 2002 [WAC 02 216 54187].¹ The CSC Director denied the initial application on the ground of abandonment on February 3, 2004, after the applicant failed to appear for a required fingerprinting.

The applicant filed another TPS application with the CSC on March 4, 2005 [WAC 05 217 71571], which she identified as an application to re-register for TPS. The CSC Director denied the application on August 16, 2005, on the ground that TPS had not been granted in the initial application, thereby making the applicant ineligible to re-register for TPS.

The current TPS application [EAC 06 360 87586] was filed at the VSC on September 19, 2006, as another initial application for TPS. The application was accompanied by photocopies of the applicant's birth certificate in El Salvador; the asylum application (Form I-589) filed by the applicant's mother, [REDACTED] in 1996; the applicant's academic school records from the San Francisco Unified School District during the years of 1998-2002; and earnings statements issued to the applicant by employers in the San Francisco Bay Area during the years of 2003-2006.

On March 7, 2007, the VSC Director denied the application. While finding that the evidence of record established the applicant's continuous physical presence in the United States from March 9, 2001, to the date of TPS filing, and her continuous residence in the United States since February 13, 2001, in accordance with section 244(c)(1)(A)(i) and (ii) of the Act, the director determined that the applicant failed to establish her eligibility for late initial registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). The director alluded to the applicant's claim to be eligible for late registration as a dependent on her mother's asylum application, but concluded that she could not be added to her mother's application because no individual asylum application was created for the applicant. The applicant filed a timely appeal and contends that she is eligible for late registration as the child of a currently eligible TPS registrant. Citizenship and Immigration Services (CIS) records indicate that the applicant's mother is a TPS registrant.

On appeal, counsel asserts that the applicant, who was born on December 12, 1984, is eligible for late initial registration under 8 C.F.R. § 244.2(f)(2)(iv) because she was a child of a TPS-eligible alien during the initial registration period for El Salvadoran nationals in 2001-02 and has remained so since turning 21 on December 12, 2005. According to counsel, the 60-day filing window prescribed in 8 C.F.R. § 244.2(g) does not apply in this

¹ During the adjudication of the initial application, the applicant also filed a re-registration application with the CSC on September 4, 2003.

situation because the applicant's status as a child is not a condition that expires or terminates. For immigration purposes in general, however, an alien ceases to be a "child" upon attaining the age of 21. *See* section 101(b)(1) of the Act. Therefore, the applicant's eligibility for late initial registration as the "child" of a TPS-eligible alien terminated on December 12, 2005, which required her to file a late initial registration within the 60-day period that expired on February 10, 2006. Since the applicant's late initial registration was filed on September 19, 2006, she does not qualify for late registration under 8 C.F.R. § 244.2(g).

Nevertheless, the regulations give the AAO (as well as the service centers and district offices) the authority to reopen a proceeding or reconsider a decision *sua sponte* if the circumstances so warrant. *See* 8 C.F.R. § 103.5(a)(5). The AAO notes that the applicant's initial Form I-821 was filed during the initial registration period for TPS applicants from El Salvador; that the ground for denying the initial application has been overcome as the applicant has now been fingerprinted twice (May 31, 2005, and April 30 2006) by the Federal Bureau of Investigation (FBI); and that the applicant meets the other criteria for TPS eligibility set forth in section 244(c) of the Act. Accordingly the AAO will reopen the initial application *sua sponte*, withdraw the CSC Director's decision, and approve the application. The applicant's re-registration application with the CSC will likewise be reopened *sua sponte*, the director's decision withdrawn, and the application approved. In addition, the VSC Director's denial of the current TPS application will be withdrawn. The appeal will be sustained, and the application approved.

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 met that burden.

ORDER: The initial application [WAC 02 216 54187] and the re-registration application [WAC 05 217 71571] are reopened, *sua sponte*, the CSC Director's decisions are withdrawn, and the applications are approved.

The appeal of the VSC Director's decision on March 7, 2007, denying the current application [EAC 06 360 87586], is sustained. The application is approved.