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DEC 06 2007

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 361 70784 as it relates to EAC 02 283 53912 and EAC 05 190 71431]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Vermont Service Center (VSC). The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO), and the application will be approved. Two subsequent applications for re-registration were denied by the Director, California Service Center (CSC), and are currently before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be 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 director denied the re-registration applications 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, counsel states that the applicant is filing her TPS application as a late initial registration and not as a re-registration application.

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 designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, 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.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted with validity until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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 first issue in this proceeding is whether the applicant is eligible for late registration.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period under CIS receipt number EAC 02 283 53912. A non-specific denial was issued by the Director, Vermont Service Center, on July 23, 2003.

The applicant filed subsequent TPS applications on April 8, 2005, under CIS receipt number EAC 05 190 71431, and on September 26, 2005, under CIS receipt number WAC 05 361 70784. Both re-registration applications were denied by the Director, California Service Center, on April 21, 2006, after he determined that the applicant's initial TPS application had been denied; and therefore, she was not eligible to apply for re-registration. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS his decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on September 6, 2002. That initial application was denied by the Director, Vermont Service Center, on July 23, 2003. 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.

The applicant filed a subsequent Form I-821 on April 8, 2005, and another on September 26, 2005. Since the initial application was denied on July 23, 2003, the subsequent applications cannot be considered as re-registration applications. The applications can only be considered as late registrations.

Therefore, the California Service Center director's, denial of the TPS applications on April 21, 2006, as re-registration applications was in error, and the applications will be treated as late initial filings.

On appeal, counsel states that the applicant is eligible as a late registrant in that her mother is a TPS registrant.

In support of the applicant's claim, the applicant submitted a copy of her El Salvadoran birth certificate with English translations, copies of her mother's Employment Authorization Cards – A file number [REDACTED] dated from October 16, 2002, to September 9, 2006. The applicant also submitted a copy of her mother's TPS approval notice, Form I-797C, dated December 26, 2001.

The applicant has submitted sufficient documentation to establish that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

The second issue in this proceeding is whether the applicant has submitted 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 applicant submitted the following documentation:

1. A copy of the applicant's El Salvadoran passport issued to her in the United States on October 30, 2002;
2. A copy of the applicant's certificate of promotion from the 6th grade to the 7th grade, dated June 21, 2000;
3. A copy of a letter from the principal from Peekskill Middle School dated July 6, 2005, in which he stated that the applicant was enrolled at the school for the 2000 and 2001 school years; and,
4. A copy of the applicant's school transcripts from Peekskill Middle School for the 2000 and 2001 school years.

The applicant has submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods as described in 8 C.F.R. § 244.2(b) and (c).

Since the applicant appears to have overcome the grounds for the denial of her initial application for TPS, that decision has been withdrawn. The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any other grounds that would bar the applicant from receiving TPS. Therefore, the initial application will be 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 this burden.

ORDER: The director's denial of the initial application is withdrawn, and the initial application, late initial application, and the re-registration application are approved.