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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
[EAC 05 134 71490]

Office: VERMONT SERVICE CENTER

Date: DEC 07 2007

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 Director, Vermont Service Center (VSC), denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who seeks 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 initial registration.

On appeal, counsel for the applicant asserts that the applicant has been physically present in the United States since 1995. Counsel asserts that the applicant was a dependent on her mother's asylum application. Counsel further asserts that the asylum application was pending for many years and that the applicant then filed for late initial TPS.

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.

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 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of Homeland Security, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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 Citizenship and Immigration Services (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 record reflects that the applicant filed a TPS application on February 11, 2005 – more than two years after the close of the initial registration period for Salvadorans. The director accepted the application under the late filing provisions in 8 C.F.R. § 244.2(f)(2). In support of her application, the applicant submitted the following photocopied documentation:

1. Her birth certificate, with translation;
2. Her New York state driver's license, issued on April 24, 2003;
3. Her New York state high school equivalency, dated May 1998;
4. Her Social Security statement, dated April 2, 2004, indicating that the applicant worked in the United States in 1996-1998, then 2000 to 2003; and,
4. Employment Authorization Documents (EAD), indicating she had obtained EADs through a pending asylum application from January 2, 1996, through August 3, 1999.

On June 26, 2006, the director requested that the applicant provide evidence to establish her eligibility for late registration under 8 C.F.R. § 244.2(f). The applicant resubmitted her EADs.

On December 15, 2006, the director denied the application. The director found that the applicant had an asylum application pending, but that the application was closed on April 1, 2003, and that the applicant did not file for TPS within 60 days after the termination of the application.

The record reflects that the applicant's mother, [REDACTED], alien registration number [REDACTED] filed a Form I-589, Application for Asylum and for Withholding of Deportation, in which the applicant was identified as a dependent child, with the VSC on December 27, 1993. CIS records confirm that the applicant received employment authorization from 1996 to 1999, based on the asylum application filed by her mother. On April 1, 2003, the New York Asylum Office interviewed the applicant's mother. On that day, the applicant's mother withdrew her asylum application and the New York Asylum Office administratively closed it. Therefore, the applicant ceased to be a dependent on her mother's asylum application on April 1, 2003. The applicant was considered an applicant for asylum until the date her mother's asylum application was withdrawn and administratively closed. Thus, the director erred in finding that the applicant was ineligible to take advantage of the late TPS registration provisions of 8 C.F.R. § 244.2(f)(2)(ii).

The application for TPS cannot be approved, however, because it was not filed within 60 days of the termination of the asylum application of the applicant's mother. As previously discussed, the asylum application was withdrawn and administratively closed on April 1, 2003. The applicant did not file her TPS application until January 26, 2005 – nearly two years later. Even though the asylum application was a qualifying condition for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii), the applicant did not file her TPS application within the 60-day period immediately following the termination of the asylum application, as required under 8 C.F.R. § 244.2(g). Accordingly, the TPS application must be denied because it was not filed within the time frame prescribed in 8 C.F.R. § 244.2(g).

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 that burden.

ORDER: The appeal is dismissed.