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FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE: DEC 17 2007
consolidated herein]
[WAC 05 228 81879]

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, California Service Center (CSC), and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

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 record reveals that the applicant filed a TPS application during the initial registration period on April 23, 2001, under receipt number LIN 01 173 50772. The District Director, Chicago, Illinois, approved that application on March 12, 2003. The applicant subsequently filed two applications for re-registration, on September 23, 2002 (receipt number LIN 03 048 53801), and on September 4, 2003 (receipt number LIN 03 260 50758). Because the Federal Bureau of Investigation fingerprint results report indicates that the applicant had an arrest record, on October 8, 2004, the applicant was requested to appear for a scheduled interview on October 27, 2004. The applicant failed to appear; therefore, the district director denied the re-registration applications based on abandonment on October 28, 2004. The appointment letter and the district director's denial decision were both returned to the district director as undeliverable by the United States Postal Service. The record does not contain evidence that the applicant had advised USCIS of a change of address. It is noted that no copy of either document was mailed to the applicant's representative although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, was on file. In this case, however, the district director should have withdrawn the applicant's TPS status rather than deny the re-registration applications pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 16, 2005, and indicated that this is her "first application to register for Temporary Protected Status (TPS)."

The CSC director treated the application as a re-registration application and determined that because the applicant's initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS; therefore, the CSC director denied the application on May 12, 2006.

On appeal, counsel asserts that the director denied the application in error because the applicant was applying under the late initial registration under 8 C.F.R. § 244.2(f)(2)(iv). Counsel further asserts that the applicant is eligible for late registration because she is the spouse of an alien currently eligible to be a TPS registrant. He submits evidence to support his assertion.

The applicant, in this case, was not filing a re-registration application but, rather, she was filing her first or initial application. Therefore, this decision of the CSC director will be withdrawn, and a decision will be made based on late initial application.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. 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, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial application on May 16, 2005.

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

The record of proceeding contains a marriage certificate indicating that the applicant and Raul Antonio Alfaro were married in Los Angeles, California, on June 28, 2001, during the initial registration period for El Salvadorans. The record also contains copies of Employment Authorization Cards issued to [REDACTED] (file number [REDACTED]) and evidence that [REDACTED] was granted TPS on July 2, 2001.

Accordingly, the applicant is eligible for TPS under the late initial registration as the spouse of an alien who has been granted TPS. 8 C.F.R. § 244.2(f)(2)(iv). However, the applicant appears to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C)(i) of the Act states, in part:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 244(c)(2)(A)(ii) of the Act states, in part:

[E]xcept as provided in clause (iii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest...

The record reveals that on April 20, 2000, the applicant was encountered at the Calexico Port of Entry, Calexico, California, as she attempted to gain admission to the United States by presenting to the inspecting officer a valid Border Crossing Card issued to another individual. In a sworn statement before an interviewing officer, the applicant stated that her name was [REDACTED] and that she was born in Mexico and is a national of Mexico. She also stated that she obtained the document from a vendor in Vera Cruz, Mexico, and she was to pay \$600 U.S. dollars, and that she knew it was illegal to use the document. She was determined to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, and she was expeditiously removed from the United States to Mexico on April 20, 2000.

On April 24, 2000, the applicant was again encountered at the Calexico Port of Entry as she attempted to gain admission to the United States by presenting to the inspecting officer an INS Form I-586 (Border Crossing Card) issued to another individual. In a sworn statement before an interviewing officer, the applicant provided the same name and nationality as before, [REDACTED], born in Mexico and national of Mexico. She stated that she obtained the document in Tijuana, Mexico, for \$100 U.S. dollars, and that she knew it was illegal to gain admission into the United States under fraudulent means. She was determined to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, and she was expeditiously removed from the United States to Mexico on April 24, 2000.

The applicant was apprehended by the United States Border Patrol on May 1, 2000, while attempting to enter the United States without inspection near the Calexico, California, Port of Entry. She again used the same name and nationality, [REDACTED], a Mexican citizen. She was granted voluntary return to Mexico on May 1, 2000; however, Mexican immigration officials twice refused to accept the applicant as a Mexican

citizen and national, and she was twice returned to the El Centro, California, Border Patrol Station. During further interview, the applicant stated that her true name is [REDACTED] and that she is a citizen and national of El Salvador. On May 2, 2000, the applicant was released on her own recognizance and allowed to remain in the United States, and a Form I-862, Notice to Appear, was also issued ordering her to appear before an Immigration Judge in Los Angeles, California, at a date to be determined.

The applicant is inadmissible to the United States, pursuant to section 212(a)(6)(C)(i) of the Act, for fraudulently or willfully misrepresenting a material fact, sought to procure or has procured a visa, other documentation, or admission into the United States or other benefit provided under this Act.

The case will be remanded so that the director shall provide the applicant the opportunity to file a Form I-601, Waiver of Grounds of Inadmissibility, and shall fully adjudicate the Form I-601 and the Form I-821. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. An adverse decision on the waiver application may be appealed to the AAO.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.