



U.S. Citizenship
and Immigration
Services

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JAN 29 2007
JAN 26 2007
Date:

FILE: [REDACTED]
[WAC 05 210 84861]

Office: CALIFORNIA SERVICE CENTER

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:



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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 applicant filed her initial TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 172 50342. The director denied that application on July 14, 2003, because the applicant failed to establish continuous physical presence in the United States from March 9, 2001, to the filing date of her TPS application. On May 10, 2005, the Director (now Chief) of the AAO dismissed the applicant's appeal from the denial decision, finding that the applicant had not overcome the ground for denial of the application. The AAO director noted the applicant's previous claims to be a citizen, first of Mexico, then of Guatemala, and finally of El Salvador, and determined that the applicant had also failed to affirmatively establish her identity and nationality.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 28, 2005, and indicated that she was re-registering for TPS or renewing her temporary treatment benefits.

The director denied the application on July 27, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of her temporary treatment 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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS or to renew temporary treatment benefits. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (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 initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed the current TPS application with CIS on April 28, 2005.

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

The burden of proof is upon the applicant to establish that 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). The applicant has also failed to affirmatively establish her identity and nationality as set forth at 8 C.F.R. § 244.9(a)(1). Additionally, she has failed to establish her qualifying continuous physical presence in the United States as set forth at 8 C.F.R. § 244.2(b). Therefore, the application also must be denied for these reasons.

It is noted that the applicant was apprehended by the United States Border Patrol on November 22, 2000, near Naco, Arizona, after having entered the United States without inspection. The applicant initially claimed to be a Mexican citizen, and later claimed to be a citizen of Guatemala after she was returned to the custody of the United States Border Patrol by Mexican immigration authorities. The applicant was placed in removal proceedings. After having been placed in removal proceedings, she made a third claim to be a Salvadoran citizen and produced a Salvadoran passport. On May 3, 2002, an Immigration Judge in Los Angeles, California, administratively closed the applicant's removal proceeding because she had a pending TPS application.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 this burden.

ORDER: The appeal is dismissed.