



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

[WAC 05 134 72574]

OFFICE: CALIFORNIA SERVICE CENTER DATE:

MAR 02 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 application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 director denied the application because the applicant failed to establish she was eligible for late registration.

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 parole; 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.

Persons applying for TPS offered to El 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. The record reveals that the applicant filed her initial application with Citizenship and Immigration Services (CIS) on February 11, 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 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).

On February 5, 2006, CIS notified the applicant of its intent to deny her TPS application and requested evidence establishing her eligibility for TPS and for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, the applicant submitted some documents to establish her qualifying residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on May 8, 2006. On appeal, counsel claims that the applicant's husband had an application for asylum pending that included her. He further argues that neither he nor the applicant received any notice that the applicant was no longer included in her husband's asylum application until she received the notice dated November 10, 2004, denying her Form I-765 application. He then concludes that the applicant was eligible for late filing under TPS when she mailed her application on January 19, 2006.

The record reveals that the applicant was married to her former husband, [REDACTED] when he filed his Form I-589, Application for Asylum And withholding of Deportation, that included her as a derivative beneficiary. The record also shows that their marriage was dissolved on January 20, 1999. She subsequently married her present husband, [REDACTED] on May 21, 2002. As a result of her divorce from her former husband and subsequent remarriage, the applicant was no longer eligible for derivative benefits under her former husband's asylum application. Therefore, counsel's argument that that the applicant was eligible for late filing under TPS because her former husband had a pending asylum application that included her as a beneficiary, is completely without merit since her eligibility for derivative asylum benefits ceased by operation of law when her marriage was dissolved on January 20, 1999.

The applicant has failed to submit any evidence that she meets the requirements for late registration as enumerated in 8 C.F.R. § 244.2(f)(2). Therefore, the director's decision to deny the application will be affirmed.

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 failed to meet this burden.

ORDER: The appeal is dismissed.