



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 05 2007

consolidated herein]

[WAC 01 243 58616]

[WAC 02 211 51739]

[WAC 05 211 74429]

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:

Self-represented

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 initial application was denied by the Director, California Service Center. A subsequent application for re-registration was denied by the Director, California Service Center (CSC), and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the case will be remanded for further consideration and 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 indicates that the applicant filed a TPS application during the initial registration period on July 11, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 243 58616. The director denied the initial application on December 3, 2003, because the evidence furnished in response to a request for additional evidence dated September 30, 2002, was insufficient to establish nationality and identity, and to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. Also, on June 17, 2002, the applicant filed a second TPS application under CIS receipt number WAC 02 211 51739, and indicated that this was her "first application to register for Temporary Protected Status (TPS)." The 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 director denied that application also on December 3, 2003.

On December 24, 2003, the applicant filed an appeal from the denial decision of her initial application. She submits a copy of a State of California Identification Card to establish identity, and copies of additional evidence in an attempt to establish residence and physical presence in the United States. CIS records indicate that on March 10, 2004, the initial application was subsequently reopened on a Service Motion to Reopen. The director again denied the initial application on July 29, 2004, after determining that the applicant was inadmissible to the United States, pursuant to section 212(a)(6)(C)(i) of the Act, for fraudulently or willfully misrepresenting a material fact, and that the applicant had not submitted a request for a waiver of grounds of inadmissibility (Form I-601). On September 3, 2004, the applicant filed an appeal from the denial decision. The director rejected the applicant's appeal on September 14, 2004, because the appeal was untimely filed, and the appeal did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3). It is noted that the applicant included with the appeal a Form I-601, Application for Waiver of Grounds of Excludability. The Form I-601 was returned to the applicant and she was advised to resubmit the form to the Los Angeles district office. The applicant subsequently resubmitted the Form I-601, and it was received at the Los Angeles district office on September 14, 2004.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 30, 2005, and indicated that she was re-registering for TPS. The director denied the re-registration application on March 17, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The record contains: (1) A Form I-213, Record of Deportable/Inadmissible Alien, issued on April 3, 1998, indicating that on April 3, 1998, at the Calexico, California Port of Entry, the applicant attempted to gain entry into the United States by presenting Form I-551, Alien Registration Receipt Card, belonging to another person [REDACTED]. She stated during a sworn statement that she obtained the card in Tijuana, Mexico, and she was to pay \$1300 upon her arrival in Los Angeles, California. The applicant was expeditiously removed to Mexico on April 3, 1998. She was advised that she is prohibited from entering,

attempting to enter, or being in the United States for a period of 5 years from the date of her departure from the United States; (2) A second Form I-213, issued on April 5, 1998, indicating that on April 4, 1998, at the Calexico, California Port of Entry, the applicant attempted to gain entry into the United States by presenting Form I-551, Alien Registration Receipt Card, belonging to another person [REDACTED]. She stated during a sworn statement that she obtained the card in Mexicali Baja, California, and she was to pay \$1200 if successful in her entry. The applicant was expeditiously removed to Mexico on April 5, 1998. She was advised that she is prohibited from entering, attempting to enter, or being in the United States for a period of 20 years from the date of her departure from the United States.

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 212(a)(6)(C)(i) of the Act.

The applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. The Form I-601, Application for Waiver of Ground of Excludability, filed by the applicant on September 14, 2004, remains adjudicated. Accordingly, the director's denial of the initial application will be withdrawn, and the case will be remanded for the adjudication of the waiver application. The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being remanded, that decision will be remanded to the director for further adjudication. 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 initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.