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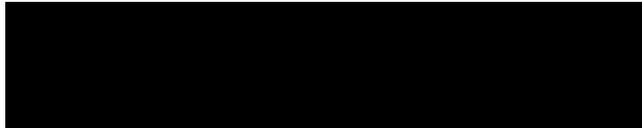
OFFICE: California Service Center

DATE:

MAR 22 2007

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 application was denied by the Director, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is 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.

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 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 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 who are El Salvadoran nationals must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002.

The record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status, on May 7, 2001. The director issued a Request for Evidence (RFE) on September 13, 2001, giving the applicant 12 weeks, until December 10, 2001, to submit documentary evidence of her El Salvadoran nationality, her residence in the United States since February 13, 2001, and her physical presence in the United States from March 9, 2001, to the date her application was filed (May 7, 2001). The applicant did not respond to the RFE by December 10, 2001, or at any time thereafter. On November 12, 2002, therefore, the director denied the application on the ground of abandonment, in accordance with the regulation at 8 C.F.R. § 103.2(b)(13).

The director noted in the decision that a denial due to abandonment could not be appealed, but that the applicant could file a motion to reopen by December 15, 2002. By letter dated December 3, 2002, received at the service center on December 9, 2002, the applicant asserted that she did not receive the RFE, although she had been living at the same address for the past two years. (The copy of the RFE in the record indicates that it was sent to the address indicated on the applicant's TPS application.) The service center treated the letter as a motion to reopen or reconsider, but on December 12, 2002, issued a Rejection Notice and returned the motion to the applicant because it had not been properly signed. The applicant resubmitted the letter/motion with her signature on February 3, 2003. The director dismissed the motion on June 24, 2003, finding that it did not meet any one of the three criteria to reopen, as specified in 8 C.F.R. § 103.5(a)(2), and was not filed within the required 33 days, in accordance with 8 C.F.R. § 103.5(a).

The applicant filed her current TPS application on April 14, 2005. On February 5, 2006, the director issued a Notice of Intent to Deny (NOID) in which the applicant was requested to submit evidence that she qualified for late registration, as well as documentation showing her date of entry into the United States, her nationality/identity, and that she met the continuous residence and physical presence requirements for TPS applicants from El Salvador. In response the applicant, who claims to have entered the United States without

inspection on October 18, 1994, submitted assorted documentation over the years 1995-2005 as evidence of her residence and physical presence in the United States during that time. On May 12, 2006, the director denied the application, stating that because the applicant's initial TPS application had been denied the applicant was not eligible to apply for re-registration under section 244 of the Act.

The applicant filed a timely appeal, submitting additional evidence of her El Salvadoran nationality and presence in the United States at various times between 2000 and 2005, and reiterating her claim that she "never received due notice" of the service center's original request for evidence in the RFE of September 2001. In regard to the "due notice" issue, the AAO notes that the tax data from the applicant's W-2 Form for 2001, submitted on appeal, identifies her home address as [REDACTED] whereas the home address the applicant listed on her initial TPS application in 2001 was [REDACTED]. This discrepancy may explain the applicant's claim that she did not receive the RFE issued by the service center in September 2001, which was sent to the address on the TPS application. Since the service center correctly sent the RFE to the address provided on the TPS application, the applicant's argument that she did not receive due notice of the request for evidence is without merit, and the director's decision to deny the initial TPS application on the ground of abandonment fully justified. The regulation at 8 C.F.R. § 244.9(c) expressly provides that "[f]ailure to timely respond to a request for information . . . without good cause will be deemed an abandonment of the application and will result in the denial of the application for lack of prosecution."

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. *See* 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS. Accordingly, the director's decision to deny the current application will be affirmed.

Moreover, there is no evidence in the file to suggest that the applicant is eligible for late initial registration for TPS under 8 C.F.R. § 244.2(f)(2).

An alien applying for Temporary Protected Status, or 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 that burden.

ORDER: The appeal is dismissed.