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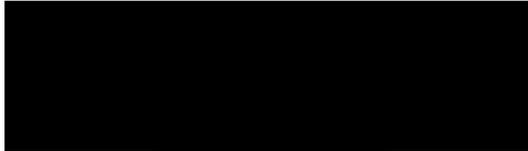
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
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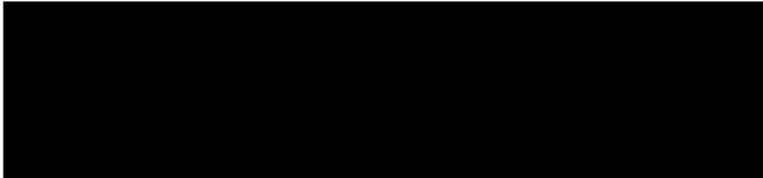
Office: VERMONT SERVICE CENTER

Date: NOV 05 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

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 director denied the application because the applicant failed to establish that she was eligible for late initial registration. The director also determined that the applicant had failed to establish her continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, through counsel, the applicant submits a statement and additional evidence.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant attempted to file an initial application for TPS with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS) on March 20, 2002, during the initial registration period under CIS receipt number EAC 02 143 52075. On January 23, 2003, the applicant was notified that the processing of that application had stopped because the bank had returned the fee payment. The notice advised the applicant that if payment was not received within 30 days, her application would be rejected as improperly filed; she would have to file a new application with fees if she wanted to continue to seek TPS; and, that re-filing would not eliminate the debt for the prior application. The applicant was then sent a notice of intent to deny dated January 28, 2003, notifying her that her form of payment for the TPS application had bounced, that it did not appear that she had a pending or approved Form I-821, Application for Temporary Protected Status, at the time, and that she had 30 days to submit payment or evidence to overcome this finding. The record contains a memorandum from the Vermont Service Center dated March 11, 2003, indicating that the application was rejected on that date due to payment of insufficient funds. Subsequently, on August 26, 2003, the applicant received a letter from [REDACTED] a collection firm, for collection of the debt owed to the Immigration and Naturalization Service (INS). The record contains a photocopy of a check from the applicant to the United States Department of the Treasury dated September 2, 2003, referencing the code provided by the collection agency for the amount due to INS.

The applicant continued to file applications marked as applications for extension or renewal of temporary treatment benefits in September 2002, November 2002, and November 2003.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 21, 2004. The director denied this application, in part, because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered must be considered as either a request for annual registration or as a new filing for TPS 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. The record reflects that the applicant did not properly file an application for TPS during the initial registration period. That initial application

was rejected by the director as improperly filed due to insufficient fees, on March 11, 2003. This current application can only be considered as a 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 temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted with validity 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 reveals that the applicant filed this TPS application with CIS, on January 21, 2004.

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).

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.

On June 2, 2004, the applicant was requested to submit evidence establishing her eligibility for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her: nationality; continuous residence in the United States since February 13, 2001; and, continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted photocopies of the following documentation: a money transfer receipt in her name dated February 2, 2001; pay statements in her name and in the name of [REDACTED] dated between 1999 and 2004; photo identification cards bearing her photo and the names [REDACTED] and [REDACTED]—State of New Hampshire Identification and Driver's Licenses issued on 2002 and 2004; checks, money orders and United States Postal Service receipts dated

in 2002 through 2004; a New Hampshire Certificate of Title date December 2002; receipts dated in 2001; affidavits; and CIS receipt notices.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on September 8, 2004.

On appeal, through counsel, the applicant states that she made a good faith effort to comply with sending the required fees and materials, that due to language barriers and ineffective assistance, it was not her fault that the fees were not properly submitted, that she never received a denial letter or rejection letter referring to her initial application, and therefore, that the current application should be viewed as an application for re-registration or extension of temporary treatment benefits, and not as an initial application under the late registration provisions. Counsel asserts that even still the applicant qualifies for late registration under the provision of 8 C.F.R. § 244.2(f)(2)(ii) because she had a pending TPS application filed during the initial registration period. In support of the appeal, through counsel, the applicant submits additional evidence dated between April of 2001 and 2004, including additional evidence to establish that [REDACTED] and [REDACTED] are one in the same person.

The applicant has not submitted sufficient evidence to establish that she qualified for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2) and (g). As discussed above, the applicant did not have a properly filed TPS application during the initial registration period. In addition, the assertion of counsel is not persuasive that the applicant would qualify for late initial registration because a "pending" Form I-821 filed during the initial registration period would constitute an application pending for relief from removal during the initial registration period. While Temporary Protected Status may confer benefits that temporarily delay the alien's removal, the temporary benefits of Temporary Protected Status do not equate to "relief from removal" obtained through an adjustment of status, cancellation of removal, discretionary relief, recommendation against deportation, or suspension of deportation. Taking counsel's argument to its logical extreme, an alien who had abandoned his initial application could file a new application within 60 days after the denial for abandonment, abandon the new application, and perpetuate the application process indefinitely; thus enjoying the benefits of Temporary Protected Status without ever successfully completing the application process. The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created to ensure that Temporary Protected Status benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations.

Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application will be denied based on the applicant's failure to establish her eligibility for late registration. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The second and third issues in this proceeding are whether the applicant submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Review of all the submitted evidence reflects that the applicant has established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and has overcome this portion of the director's findings. However, the applicant has failed to establish her eligibility for late registration; and therefore, the appeal will be dismissed.

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.