



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[WAC 04 139 52709]

OFFICE: California Service Center

DATE: NOV 19 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.

for 
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC). It is now on appeal before the Administrative Appeals Office (AAO). 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 register in a timely manner.”

On appeal, the applicant’s representative submits a statement and copies of previously submitted evidence.

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 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.

El Salvadoran nationals applying for TPS 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 El Salvadorans was from March 9, 2001, through September 9, 2002.

The record shows that the applicant's initial Form I-821, Application for Temporary Protected Status, was filed at the CSC on April 19, 2004.

To qualify for late TPS 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. *See* 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. *See* 8 C.F.R. § 244.9(b).

The director determined that the applicant had "failed to [initially] register in a timely manner," and denied the TPS application on August 9, 2004.

On appeal, the applicant's representative states that the applicant filed a timely TPS application on July 2, 2001, but the Immigration and Naturalization Service (now Citizenship and Immigration Services, or CIS) apparently lost the application. The applicant submits the following relevant evidence:

1. A photocopy of a generic (non-governmental) "Receipt," dated July 2, 2001, in the amount of \$140.00, annotated as from the applicant "for TPS," and signed by Wendy.
2. A photocopy of a U.S. Postal Service (USPS) Certified Mail Receipt, dated July 2, 2001, identifying the addressee as TPS in Laguna Niguel, California, but not identifying the sender.
3. A USPS Form 3811, Domestic Return Receipt, identifying the applicant as the sender, addressed to "TPS" in Laguna Niguel, California, and bearing a receipt stamp of the Immigration and Naturalization Service (INS) dated July 10, 2001.
4. A USPS Form 3811, Domestic Return Receipt, identifying the applicant as the sender, addressed to the INS in Laguna Niguel, California, and bearing a receipt stamp reading "Immigration and Naturalization Service Received by February 8, 2002."
5. A photocopy of a letter from the applicant to the CSC, dated August 1, 2003, requesting information concerning the status of a TPS application she submitted in 2001.

The record also contains the following documents:

6. A photocopy of a letter from the applicant to the CSC, dated November 8, 2002, stating that she applied for TPS on July 2, 2001, but never received a receipt notice or any other response.
7. A Form I-765 filed by the applicant at the CSC on November 15, 2002 [WAC 03 073 52552], with a TPS application (Form I-821) attached thereto.
8. A Form I-765 filed by the applicant at the CSC on September 15, 2003 [WAC 03 261 52039], with a TPS application (Form I-821) attached thereto.
9. A photocopy of the front side of a Travelers Express International Money Order, dated July 2, 2001, payable to the Immigration and Naturalization Service from the applicant in the amount of \$150.00. Bold-letter information above the money order states that the sum was manually deposited on December 27, 2001, and notes a partial file number reading "WAC 02 1050."
10. A photocopy of a "Federal Deposit Log," dated December 27, 2001, which references the \$150 money order, describes it as "undeliverable mail . . . deposited in the Federal Reserve Lock Box" and notes the same partial file number "WAC 02 1050."

As previously discussed the TPS application under appeal was originally submitted to the CSC, along with an application for employment authorization, in July 2001. Notations on the application forms, however, indicate that they were not accepted as properly filed. The applicant subsequently filed a new Form I-765 on November 15, 2002, fee-receipted by the CSC on January 3, 2003 [WAC 03 073 52552], along with a new Form I-821, identified by the applicant as an application to re-register for TPS, which was not separately filed by CSC because no separate fee was submitted for re-registration. Accompanying these applications was the aforementioned letter from the applicant, dated November 8, 2002, stating that she had filed her initial TPS and employment authorization applications on July 2, 2001, but had not received any response from the CSC, together with copies of those applications. On September 15, 2003, the applicant submitted yet another Form I-765, fee-receipted by the CSC on September 18, 2003 [WAC 03 261 52039], along with another Form I-821, identified by the applicant as an application to re-register for TPS, which once again was not separately filed by CSC because no separate fee was submitted for re-registration. Accompanying these applications was the aforementioned letter from the applicant, dated August 1, 2003, reiterating her contention that she had filed her initial TPS application in 2001 and requesting a status update.

On February 24, 2004, the CSC sent the applicant two Notices of Intent to Deny (NOID), which referenced her two applications for employment authorization [WAC 03 073 52552 and WAC 03 261 52039] and stated that "[o]ur electronic records did not indicate that you have filed your I-821 with the service center." As proof that she paid the requisite filing fee for her TPS application, the applicant was advised to submit "[a] copy of the front and back of your canceled check."

On April 19, 2004, after submission of the requisite fees, the original Form I-821 was fee-receipted by the CSC as WAC 04 139 52709, and the original Form I-765 was fee-receipted by the CSC as WAC 04 139 52724.¹ On August 9, 2004, the director denied the TPS application on the ground that "the applicant failed to register in a timely manner," citing 8 C.F.R. § 244.1, which defines "register" as follows:

Register means to properly file a completed application with proper fee for temporary protected status during the registration period designated under section 244(b) of the Act.

Since the registration period for El Salvadoran nationals applying for TPS closed on September 9, 2002, the director concluded that the applicant's Form I-821, filed more than one and a half years later on April 19, 2004, was not timely filed.

On appeal, the applicant reiterates her contention that she applied for TPS at the CSC in July 2001, that the certified mail receipts prove this fact, and that the CSC cashed her money order for the filing fee. While the applicant did send her original TPS application to the CSC in July 2001, the record indicates that it was not filed at that time because the requisite filing fee was not submitted. In the NOIDs issued on February 24, 2004, the applicant was requested to submit a copy of her canceled check, front and back, as evidence that she had paid the filing fee for her TPS application, Form I-821. After indicating that she had misplaced the check, the applicant submitted the aforementioned photocopy of a money order for \$150.00, dated July 2, 2001, which was allegedly deposited on December 27, 2001. The authenticity of the money order appears questionable, however, in view of the applicant's previous denial that she had it and because of the inconsistent fonts and shading on the document. Furthermore, there is no information regarding the source of the bold letter information above the money order. The reference to a file reading "WAC 02-1050" is clearly erroneous, since that is not a filing format for CIS files. The clerk referenced as [REDACTED] is not further identified. The record also includes a bold-letter document entitled "Federal Deposit Log," dated December 27, 2001, which references the money order and describes it as "undeliverable mail . . . deposited in the Federal Reserve Lock Box." This document, like the money order document, refers to the erroneous file number "WAC 02-1050" and bears the penciled initials "NMR," without further clarification. The only other evidence of the payment of a filing fee in 2001 is the aforementioned photocopy of a generic "Receipt," dated July 2, 2001, for cash from the applicant in the amount of \$140, annotated "for TPS," and signed by Wendy. There are no official stamps on the Receipt or the Federal Deposit Log, however, nor any other authenticating indicia to confirm that the money was in payment for the filing fee of a Form I-821.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain the inherent inconsistencies and other evidentiary shortcomings of the money order document, the federal deposit log, and the generic receipt. Since there is no other evidence, aside from those materials, of the payment of a filing fee

¹ On April 20, 2004, the Form I-765 was approved, based on the pending Form I-821. On that same date the CSC terminated the prior applications for employment authorization filed in November 2002 [WAC 03 073 52552] and September 2003 [WAC 03 261 52039].

for a Form I-821 prior to 2004, the record does not establish that the applicant paid the filing fee for her TPS application in 2001, or at any time prior to 2004.

Thus, the applicant has not established that she registered a Form I-821 application for TPS, in accordance with the requirements of 8 C.F.R. § 244.1, during the initial registration period for El Salvadoran nationals, which ran from March 9, 2001, to September 9, 2002. Nor does the record establish that the applicant is eligible for late TPS registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). Accordingly, the director's denial of the application for "fail[ure] to register in a timely manner" will be affirmed.

It is noted that the applicant is subject to a Warrant of Deportation issued by the District Director in Los Angeles, California, on June 11, 1993, after she failed to comply with an order for voluntary departure by December 31, 1992. The Warrant of Deportation remains outstanding.

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 not met that burden.

ORDER: The appeal is dismissed.