



U.S. Citizenship
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Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: OCT 04 2007

[WAC 05 229 74840]
[WAC 01 173 54522]

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 (CSC). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion 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 re-registration application [WAC 05 229 74840] on October 31, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The applicant appealed the director's decision to the AAO on November 29, 2005. The AAO reviewed the record of proceeding and noted that the applicant's initial TPS application [WAC 01 173 54522] was denied by the CSC director on August 9, 2004, after determining that the applicant had abandoned her application based on her failure to appear for fingerprinting on March 2, 2004, and that the CSC director also denied a subsequent TPS re-registration application [WAC 02 286 53533] on August 9, 2004, because the initial TPS application had been denied and the application was not eligible to apply for re-registration for TPS. The AAO noted that although the record indicates that the applicant subsequently was fingerprinted and the Federal Bureau of Investigation fingerprint results report did not reflect a criminal record that would bar the applicant from receiving TPS, the record of proceeding contains insufficient evidence to establish that the applicant has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c), and that the applicant had also failed to submit evidence to establish her nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the AAO dismissed the appeal on December 26, 2006.

A motion to reopen was filed on February 14, 2007.¹ The applicant asserts that she did not receive a fingerprint appointment for March 2, 2004, and that she was unaware of the denial of her TPS application on August 9 2004; therefore, she is filing a late motion to reopen her initial application [WAC 01 173 56290]. She further asserts that the delay in filing a motion to reopen was reasonable and beyond her control because she cannot read, write, speak, or understand the English language, and that she had "paid someone to check online on her behalf various times."

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

A review of the record reveals that the applicant has presented no new facts or other documentary evidence in support of the motion to reopen, particularly, the AAO's findings that the applicant had not established her qualifying continuous residence and continuous physical presence during the requisite periods. It is also noted that although the applicant asserts that she did not receive a fingerprint appointment for March 2, 2004, the record indicates that the appointment letter and the director's denial decision dated August 9, 2004, were both

¹ Coupled with three days for mailing, this motion, if the motion were to be applied to the AAO's decision to dismiss the appeal on December 26, 2006 [relating to her re-registration application], should have been filed on or before January 29, 2007. The motion was received at the California Service Center on February 14, 2007.

mailed to the applicant's most recent address at that time [REDACTED]. There is no evidence in the record that the applicant had advised CIS of a change of her address, nor is there evidence that the notices were returned to CIS as undeliverable. In fact, it is noted that a copy of the director's denial decision dated August 9, 2004, was included with her appeal dated November 29, 2005, when she appealed her re-registration application.

Furthermore, any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i). The applicant asserts that her total lack of English language skills prevented her to file a timely motion to reopen her initial TPS application and, therefore, the delay was reasonable and beyond her control.

This assertion of the applicant is not persuasive. The applicant could have sought legal counsel, or religious, charitable, social service, or similar organization for advice and guidance. Her lack of English language skills cannot be accepted as reasonable and beyond her control as the cause for her failure to file a motion to reopen within 30 days of the decision that the motion seeks to reopen.

Accordingly, the motion will be dismissed, and the previous decision of the AAO will be affirmed.

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 motion is dismissed. The decision of the AAO dated December 26, 2006, is affirmed.