



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 06 305 70427]

OFFICE: Vermont Service Center

DATE: OCT 04 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: 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, Vermont Service Center (VSC). 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.

The director denied the application on the ground that the applicant failed to establish her eligibility for late TPS registration.

On appeal the applicant asserts that she was eligible for late TPS registration as a dependent on her mother's asylum application because Citizenship and Immigration Services (CIS) neglected to inform her that 21 years is the maximum age at which a child can still be carried as a dependent on an asylum application.

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 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.

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 applicant filed her initial Form I-821, Application for Temporary Protected Status, on July 23, 2006 – nearly four years after the close of the initial registration period for El Salvadoran nationals.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) above, and filed her TPS application within 60 days of the expiration of that condition, as prescribed in 8 C.F.R. § 244.2(g).

The burden of proof is upon the applicant to establish that he or 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 his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. *See* 8 C.F.R. § 244.9(b).

On December 22, 2006, the VSC Director issued a Notice of Intent to Deny (NOID) in which she requested the applicant to submit a list of her addresses during the three years prior to entering the United States and, after noting that her asylum application had been administratively closed/withdrawn on May 12, 2006, requested the submission of evidence that the applicant was eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2) and (g), and that she had resided in the United States continuously since February 13, 2001. The applicant responded to the NOID on January 16, 2007, with additional documentation.

On April 19, 2007, the director denied the application. After finding that the evidence submitted by the applicant established her qualifying condition and timely filing for late TPS registration based on her mother's asylum application, as well as her continuous residence and physical presence in the United States since the requisite dates in February and March 2001, the director denied the application on the ground that the applicant – who was born on June 22, 1980 – was over 21 years of age when she filed for TPS, and therefore was no longer considered a child for immigration purposes who could ride as a dependent on her mother's asylum application.

On appeal the applicant asserts that she was never advised by CIS that she was no longer considered a dependent after she turned 21, and points out that she continued to receive employment authorization annually from CIS,

based on her mother's pending asylum application, after her 21st birthday. In view of this favorable treatment of her applications for employment authorization, the applicant requests that she be granted TPS as well as an eligible late registrant based on a pending asylum application.

The record shows that the applicant's mother, [REDACTED] filed a Form I-589, Application for Asylum and for Withholding of Deportation, in which the applicant was identified as a dependent child, at the California Service Center (CSC) on January 19, 1996. CIS records confirm that the applicant received employment authorization every year from 1996-97 to 2004-05, based on the asylum application filed by her mother. On June 15, 2005, the Los Angeles Asylum Office sent a notice directly to the applicant in regard to the "I-589, Application for Asylum," scheduling her to appear at the CIS Application Support Center in South El Monte, California, during a two-week window to be fingerprinted and photographed "in order to process your application." CIS records show that the applicant and her mother were each interviewed at the Los Angeles Asylum Office on April 17, 2006, and that the asylum application was administratively closed/withdrawn for each individual on May 12, 2006. The foregoing record supports the applicant's contention that CIS continued to treat her as an applicant for asylum after she turned 21 until the date the application was administratively closed/withdrawn in May 2006. This treatment comports with U.S. law as enshrined in section 208(b)(3)(B) of the Act, 8 U.S.C. § 1158(b)(3)(B). Thus, the director erred in finding that the applicant was ineligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii) merely because she was over 21 years old at the time of filing.

The application for TPS cannot be approved, however, because contrary to the director's finding it was not filed within 60 days of the termination of her mother's asylum application. As previously discussed, the asylum application was administratively closed/withdrawn by the Los Angeles Asylum Office on May 12, 2006. The applicant did not file her TPS application until July 23, 2006 – which was 72 days later. Thus, even though the asylum application was a qualifying condition for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii), the applicant did not file her TPS application within the 60-day period immediately following the termination of the asylum application, as required under 8 C.F.R. § 244.2(g). Though the applicant asserts that she filed for TPS within 60 days of receiving notice of the closure of the asylum application in early June 2006, the operative date for calculating the 60-day window for filing a TPS application, as the language in 8 C.F.R. § 244.2(g) makes clear, is the date the asylum application was administratively closed/withdrawn. That date was May 12, 2006. Accordingly, the TPS application must be denied because it was not filed within the time frame prescribed in 8 C.F.R. § 244.2(g).

The application will be denied for the above stated reasons, with each considered as an independent and alternative ground 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 that burden.

ORDER: The appeal is dismissed.