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FILE:



Office: Vermont Service Center

Date: OCT 05 2007

[EAC 06 297 70762]

IN RE:

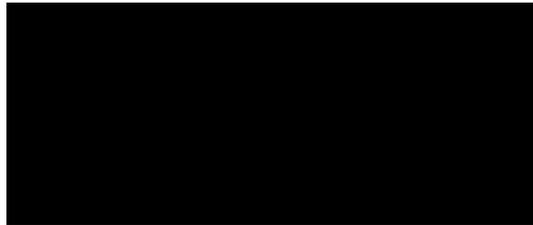
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration  
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, California Service Center. A subsequent application was denied by the Director, Vermont Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the case will be remanded for further consideration and action.

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 record reveals that the applicant filed a late initial TPS application on May 31, 2005, under CIS receipt number WAC 03 243 70441. The Director, California Service Center, denied the application on November 9, 2005, because the applicant failed to establish eligibility for late initial registration for TPS. The applicant did not file an appeal from the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on July 24, 2006, under CIS receipt number EAC 06 297 70762, and indicated that she was filing a new application for TPS. The Director, Vermont Service Center, denied that application on April 13, 2007, because the applicant failed to establish eligibility for late initial registration for TPS.

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 as 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.

Persons applying for TPS offered to El Salvadorans 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 Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with Citizenship and Immigration Services (CIS) on May 31, 2005, and this application on July 24, 2006.

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. 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. 8 C.F.R. § 244.9(b).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he/she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and he/she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On appeal, counsel asserts that the applicant is eligible for TPS, and states that the applicant is eligible for late initial registration because the applicant had a pending asylum application as evidenced by the issuance of Employment Authorization Document (EADs), under the category "C (08)", from 1997 to 2004 (which are reflected in the record of proceeding), which indicates that the applicant was an asylum applicant.

In order for the applicant to be eligible for late TPS registration, as a former asylum applicant, she should have submitted her TPS application, no later than 60 days immediately following termination of her asylum application pursuant to the regulations 8 C.F.R. § 244.2(f)(2) and 8 C.F.R. § 244.2(g). As noted by the Vermont Service Center Director, CIS records reflect that the applicant's asylum application was denied on January 13, 1995. The record reflects that the applicant was first placed in proceedings before the Immigration Court on June 9, 2006, after her initial TPS application was denied.

As noted by counsel, the applicant continued to receive EADs under the category "C(08)" and her last EAD expired on July 16, 2005. As noted above, the applicant filed an initial TPS application on May 31, 2005, prior to the expiration of her last EAD.

Based on the record of proceedings, it appears that the applicant had a pending asylum application when she filed her initial TPS application, and therefore, the applicant was eligible for late initial registration when she filed her initial TPS application. The director should re-examine the record of proceedings and address the discrepancies in the record (discussed above) in order to determine whether the applicant is eligible for late initial registration.

It is also noted that the applicant has not submitted sufficient evidence to establish her continuous residence in the United States from February 13, 2001 and her continuous physical presence since March 1, 2001 to the date of filing her initial TPS application on May 31, 2005.

The director's denial of the initial application will be withdrawn; the application will be remanded, and the director shall issue a request for evidence to afford the applicant an opportunity to submit the evidence to establish her eligibility for TPS. The applicant has produced evidence that she may be eligible for late initial registration for TPS. CIS must ascertain continuous residence and continuous physical presence. The director's denial of the current TPS application is dependent upon the adjudication of the initial application. Since the initial application is being remanded, that decision will be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Salvadorans.

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 initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The current application is remanded for further action consistent with the director's new decision on the initial application.