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**U.S. Citizenship
and Immigration
Services**

MI

FILE:

[EAC 04 084 51395]

Office: Vermont Service Center

Date: APR 02 2008

INRE:

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 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), and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn and the appeal will be sustained.

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 respond to a request for evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods as well as her eligibility for TPS late registration. The applicant also failed to provide evidence that she is a national of El Salvador. Therefore, the director determined that the grounds of denial had not been overcome.

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 filed her initial application (EAC 01 156 51823] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on March 22, 2001. That application was denied on April 10, 2003, due to abandonment because the applicant failed to respond to a request for additional evidence. The applicant did not file a motion to reopen this application during the requisite timeframe.

The applicant filed a subsequent Form 1-821, Application for Temporary Protected Status, on January 23, 2004. The director denied this application on August 17, 2004, 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. The director also denied the application because the applicant failed to establish her continuous residence and continuous physical presence in the United States during the requisite time periods. In addition, the director denied the application because the applicant failed to establish that she is a national of El Salvador.

Since the applicant did properly file an application during the initial registration period, the director erred in her explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form 1-821 was properly filed on March 22, 2001. That initial application was denied by the director on April 10, 2003. Any Form 1-821 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 applicant filed a subsequent FOITI 1-821 on January 23, 2004. Since the initial application was denied on April 10, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this 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 is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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.

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.

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 by the Secretary of the Department of Homeland Security, with validity until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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).

On April 21, 2004, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing her application. In addition, the applicant was requested to submit evidence to establish that she is a citizen or national of El Salvador. The director determined that the record did not contain a response from the applicant; therefore, the director denied the application on August 17, 2004.

On appeal, the applicant states that she did not send the requested documents because she had moved and never received the director's request for additional documentation. Along with her appeal, the applicant submits additional evidence in support of her claim of eligibility for TPS.

The director denied the application and noted that the record did not include a response to her April 21, 2004 request. However, a review of the record of proceedings reflects that the applicant responded to the director's request on May 24, 2004, before the director's decision to deny her application on August 17, 2004. As such, it appears the director erred in her conclusion and did not include the applicant's response in the decision.

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed her application after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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.

The applicant claims on the Form 1-821, Application for Temporary Protected Status, that she married Mr. [REDACTED] on July 1, 1995. The applicant also submitted a copy of her marriage certificate reflecting that the applicant was married to Mr. [REDACTED] on July 1, 1995, at Union City, New Jersey. Further, the CIS computer systems reflect that Mr. [REDACTED] was granted temporary protected status on April 24, 2004. As such, the applicant has established that she has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the director's decision to deny the application on this ground will be withdrawn.

The second issue in this proceeding is whether the applicant has established her continuous residence and her continuous physical presence in the United States during the requisite time periods.

Along with her appeal, the applicant submits the following additional documentation: copies of the birth certificates of her children born on April 17, 1996 and August 23, 2002; copies of her marriage certificate; a copy of a letter dated November 5, 2003, from First Premier Bank; a copy of a Travelers Express money order dated March 19, 2001; a copy of a receipt from Action Wheel Driving School dated November 13, 2002; a copy of a letter dated September 2, 2004, from [REDACTED] of Provident Bank, stating that the applicant and her husband had maintained a savings account since July 18, 2001; a copy of a letter dated May 18, 2001, from the Service regarding her employment authorization document (EAD); copies of her and her husband's U.S. Individual Income Tax Returns for the years 2001 and 2002; and copies of her husband's IRS Forms 1099-MISC, Miscellaneous Income, for the years 2001 and 2002.

A review of the evidence establishes that the applicant has continuously resided in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001, to the date of filing her application. Therefore, the director's decision to deny the application based on this issue is withdrawn.

The third issue in this proceeding is whether the applicant has established that she is a national of El Salvador.

A review of the record of proceedings reflects that the applicant had already submitted copies of her El Salvadoran passport along with her initial application for employment authorization filed on March 22, 2001. Therefore, the applicant has established that she is a national of El Salvador. Therefore, the director's decision on this issue will also be withdrawn and the application will be approved.

It is also noted that a review of the record reflects that the applicant had applied for asylum on January 30, 1996 and that application was withdrawn on September 24, 1998. In addition, an Immigration Judge at Newark, New Jersey, had granted the applicant voluntary departure until January 22, 1999.

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 met this burden.

ORDER: The director's decision is withdrawn and the appeal is sustained.