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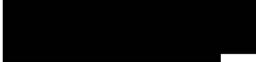


U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **JAN 22 2008**

[EAC 04 09551335]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vennont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The decision of the director will be withdrawn, and the application will be approved.

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 establish she was eligible for late registration, and failed to establish her qualifying continuous physical presence in the United States during the requisite time period.

On appeal, the applicant submits a brief statement and additional documentation.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for [TPS] during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant filed a first Form 1-821, Application for Temporary Protected Status, with the Nebraska Service Center (NSC) on January 18, 2002, during the initial registration period (LIN 02 091 50814 relates). On February 14, 2002, the director of the NSC requested the applicant to submit evidence of her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The record reflects that the applicant failed to respond to the director's request.

The director denied the applicant's first TPS application on June 14, 2002, due to abandonment. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the director's denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed another Form 1-821 on September 19, 2002, however the NSC returned this application to her stating that a previous application had been denied.

The applicant filed the current Form 1-821 with the VSC on February 12, 2004. The director of the VSC denied this application 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 determined that the applicant had failed to establish her qualifying continuous physical presence in the United States during the requisite time period.

Any Form 1-821 application subsequently submitted by the same applicant after an initial application is filed and a decision on that application is rendered, must be considered as either a request for annual re-registration or renewal of temporary treatment benefits, or as a new filing for TPS benefits. If an applicant is filing an application for annual re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must re-register annually. In addition, the applicant must continue to maintain the conditions of TPS eligibility. 8 C.F.R. § 244.17. If the applicant is applying to renew her temporary treatment benefits, she must have a pending TPS application.

Since the applicant's first Fonn 1-821 was denied on June 14,2002, due to abandonment, and she no longer has a pending application, the current application cannot be considered as an application for annual re-registration or renewal of temporary treatment benefits. This Fonn 1-821 can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period.

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 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 tennination 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. As previously indicated, the applicant filed this TPS application on February 12, 2004.

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 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. 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. 8 C.F.R. § 244.9(b).

The record reveals that, in support of her initial Form 1-821, the applicant submitted evidence of her nationality and identity, and documentation indicating her presence in the United States in December 1999, January 2001, March 2000, November 2000, and January 2001. In support of the current Form 1-821, the applicant submitted documentation indicating her presence in the United States in May 2002, August 2002, and June 2003. She also submitted a photocopy of a letter, dated August 4, 2003, from State Farm Insurance, Yonkers, New York, stating that she had been insured by the company continuously since March 20, 2000.

On February 25, 2004, the director of the VSC requested the applicant to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). She was also requested to submit evidence of her identity and nationality, and her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant, in response, provided a letter stating that she qualifies for late registration because she is the spouse of an alien currently eligible to be a TPS registrant. She also submitted an additional photocopy of her El Salvadoran birth certificate, with English translation; photocopies of documentation dated December 1999, November 2000, and April 2001; a photocopy of a school transcript for the summer 2001-2002 session; a photocopy of a letter indicating that she had taken her child to the Aspen Basalt Care Clinic, Basalt, Colorado, in April and September 2001; and, a photocopy of a letter, dated March 11, 2004, from _____ stating that the applicant had worked as a baby-sitter in her home "starting on January 2000, until 2001."

The director determined that the applicant had failed to establish she was eligible for late registration and had failed to establish her qualifying continuous physical presence in the United States since March 9, 2001. The director of the VSC denied the application on July 12, 2004.

On appeal, the applicant again states that she qualifies for late registration because she is the spouse of an alien currently eligible to be a TPS registrant. In support of the appeal, the applicant submits a photocopy of her marriage certificate, with English translation, and additional documentation indicating her presence in the United States in February 1999, October 2000, January 2001, April 2001, and May 2004.

The record confirms that the applicant filed the instant Form 1-821 after the initial registration period had expired. Since the applicant's previous Form 1-821 was denied, the instant Form 1-821 cannot be considered as an application for annual re-registration. The instant application can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period.

A review of the alien registration file relating to the applicant's spouse, [REDACTED] reflects that he was granted TPS on April 8, 2002. The marriage certificate submitted in support of the appeal, reflects that the applicant and her spouse were married in EI Salvador on February 29, 1996.

Based on a review of the record, it is concluded that the applicant qualifies for late registration under 8 C.F.R. § 244.2(f)(2)(iv). It is further concluded that sufficient evidence has been submitted to establish that the applicant satisfies the continuous residence and continuous physical presence requirements of §§ 244.2(b) and (c). Therefore, the appeal will be sustained. The decision of the director will be withdrawn, and the application will be approved.

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained. The decision of the director, dated July 12, 2004, is withdrawn, and the application is approved.