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U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 07 001 71209]

Office: VERMONT SERVICE CENTER

Date: JAN 29 2008

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 Director, Vermont Service Center (VSC), denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director found that the applicant had established her qualifying continuous residence and continuous physical presence in the United States, but denied the application, because the applicant failed to establish she was eligible for late registration.

On appeal, counsel for the applicant submits additional documentation.

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.

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 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of Homeland Security, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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 Citizenship and Immigration Services (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).

The record reflects that the applicant filed a TPS application on September 1, 2006 – almost four years after the close of the initial registration period for Salvadorans. The director accepted the application under the late filing provisions in 8 C.F.R. § 244.2(f)(2). In support of her application, the applicant submitted photocopies of the following: her birth certificate, with translation; the biographical page of her Salvadoran passport; a Form I-94, indicating that she had been paroled into the United States on April 25, 2001, based on a pending Form I-589, Application for Asylum and for Withholding of Deportation; her asylum application; and various documents relating to her residence and physical presence.

On April 23, 2007, the director noted that the applicant's asylum application had been denied on September 4, 2005, and requested that the applicant provide evidence to establish her eligibility for late registration under 8 C.F.R. § 244.2(f). The director also requested that the applicant submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. Finally, the director requested that the applicant submit a final court disposition for an arrest on December 14, 1991. In response, the applicant submitted a court disposition, indicating that the charge brought against her in 1991 had been

dismissed; and, photocopies of seven Employment Authorization Documents (EADs) issued from December 28, 1995, continuously, through November 29, 2005, based on a pending asylum application.

On June 5, 2007, the director denied the application, determining that the applicant had established her qualifying continuous residence and continuous physical presence, and had established that her asylum application was a qualifying condition for late registration, but denied the application because the applicant had not filed her initial TPS application within 60 days of her asylum application being denied.

On appeal, the applicant asserts that her application should be approved. She indicates that she is sending a brief and/or evidence to the AAO within 30 days. No brief or additional evidence has been submitted. Therefore, the record is considered complete.

The applicant had an application for asylum pending during the initial TPS registration period. This provided the applicant a qualifying condition for late registration under 8 C.F.R. § 244.2(f)(2)(ii).

The current application cannot be approved, however, because CIS records reflect that on September 4, 2005, the applicant's asylum application was denied by the Los Angeles Asylum Office because the applicant failed to appear for a scheduled interview. The applicant had 60 days from the denial of her asylum application to file for late initial TPS. As previously mentioned, the applicant did not file her initial TPS application until September 1, 2006, or 361 days after the denial of her asylum application. Accordingly, the director's decision to deny the TPS application on this ground will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements cited above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.