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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC Copy

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FILE:



OFFICE: Vermont Service Center

DATE:

MAY 28 2008

[EAC 0625974450]

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated to be 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 because the applicant failed to establish she was eligible for late registration and that she had failed to submit evidence to establish her nationality and identity.

On appeal, counsel for the applicant asserts the applicant's eligibility 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 designated by the Attorney General 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
- (t)
 - (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 (t)(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 application with Citizenship and Immigration Services (CIS) on June 5, 2006.

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(t)(2) above.

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 December 20, 2006, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(t)(2). The applicant was also requested to submit evidence establishing her continuous residence and continuous physical presence, as well as her national identity. The applicant, in response, provided evidence in an attempt to establish her qualifying residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and that she had failed to submit a copy of her identity document. He, therefore, denied that application on April 5, 2007.

On appeal, counsel reasserts the applicant's eligibility for TPS.

Counsel states that the applicant is eligible for TPS due to the fact that she is the beneficiary of a pending Form 1-130 filed on her behalf under section 203(a)(2)(A) of the Act. However, individuals who are awaiting preference allocation for an immigrant visa under section 203 of the Act are not prima facie eligible for TPS and must establish that they are independently qualified for Temporary Protected Status. In addition, a pending Form 1-130 application is not an application for adjustment of status and does not render the applicant eligible for late initial registration.

The applicant has submitted evidence in an attempt to establish her qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Form 1-821, Application for Temporary Protected Status, within the initial registration period. The applicant has not

submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS will be affirmed.

The applicant has failed to establish her national identity. Section 8 C.F.R. § 244.9 requires applicants to submit all information requested in the instruction on the forms and as may be requested by CIS. Acceptable evidence of nationality includes:

- i. Passport;
- ii. Birth Certificate accompanied by photo identification; and/or
- iii. Any national identity document from the alien's country of origin bearing a photo and/or fingerprint.

The record reveals that the applicant has only submitted a copy of her Salvadoran birth certificate and an English translation and not the required photo identification. The evidence submitted is not sufficient to establish the applicant's national identity. Therefore, the director's decision to deny the application on this ground is also affirmed.

The record of proceeding contains a Warrant of Removal/Deportation, Form 1-205, issued on December 4, 2006, in Houston, Texas, based on a final order of removal by an Immigration Judge on October 24, 2006. The applicant was granted voluntary departure in lieu of removal, without expense to the Government on or before December 23, 2006 or any extensions as may be granted by the District Director, Department of Homeland Security, and under whatever conditions the District Director may direct.

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

ORDER: The appeal is dismissed.