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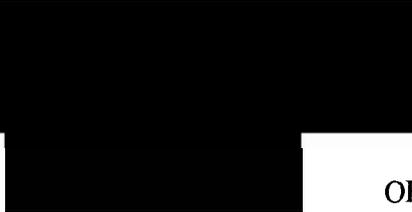


U.S. Citizenship
and Immigration
Services

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FILE:



[EAC 08 046 73688]

OFFICE: Vermont Service Center

DATE: NOV 03 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:



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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims 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 also failed to submit a photo identity document.

On appeal, counsel states that CIS erred in denying the applicant's TPS application.

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
- (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.

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 October 22, 2007.

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 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 1, 2008, 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 a copy of her identity document.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on June 3, 2008.

On appeal, counsel states that during the initial registration period, the applicant thought that she had an application for asylum pending with CIS. Counsel further states that the applicant did not file her initial TPS application in 2001 based on the reliance that her asylum application was still pending at the time, and thus, the applicant's late filing of TPS should be subject to equitable tolling where there is no notice of her asylum denial until 2007.

It is noted that the record includes the applicant's Form I-589, Application for Asylum and Withholding of Deportation, filed on February 11, 1996. On June 28, 1999, the Immigration Judge denied the applicant's asylum application and ordered the applicant removed because of the applicant's failure to appear at her scheduled deportation or removal hearing. It is also noted that the notice was sent to the applicant's address of record at [REDACTED] Los Angeles, CA 90004. Therefore, the applicant did not have a pending application for asylum during the initial registration period for Salvadorans from March 9, 2001, through September 9, 2002. The applicant's TPS application was received on October 22, 2007. The applicant has not established 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.

Finally, the applicant has failed to establish her national identity. Section 8 C.F.R. § 244.9 requires applicant's to submit all information requested in the instructions of the forms and as may be requested by CIS. It also provides that acceptable evidence of nationality are:

- (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.

On appeal, counsel states that although the applicant was unable to submit a copy of her passport or a copy of her national identification document or another photo identify document, she submitted other documents to prove her identify. In this case, the applicant submitted a copy of her Salvadoran birth certificate with an English translation; copies of her and her sons' Social Security cards; and copies of her Employment Authorization Document (EAD) cards. However, the notice that was sent on April 1, 2008, clearly stated that "identity document may consist of a copy of passport, a copy of National Identification Document, or another photo identity document. Do not submit a copy of a previously issued EAD." The applicant has, thereby, failed to establish her nationality and identity because there is not a national identity document, such as passport or cedula, from the alien's country of origin bearing a photo ID or fingerprint of the applicant. 8 C.F.R. § 244.9(a)(1); 8 C.F.R. § 103.2(b)(3). Consequently, the director's decision to deny the application for TPS will also be affirmed.

An alien applying for TPS 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.