



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: Vermont Service Center DATE: SEP 09 2008
[WAC 03 0058 54024]

IN RE: Applicant: [REDACTED]

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. Wieman
Robert P. Wieman, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be granted and the appeal will be dismissed.

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 she had not established her qualifying continuous residence and continuous physical presence in the United States during the required period.

On motion, the applicant states that the previous AAO decision incorrectly stated her country of birth. She further states that she was only 15 years of age at the time her TPS application was submitted and she was left to the mercy of family members and strangers who incorrectly handled the filing of her TPS application..

The record reflects that the applicant filed an untimely appeal which was rejected by the AAO on July 7, 2008. The decision incorrectly stated that the applicant was from Honduras. The July 7, 2008 decision of the AAO will, therefore, be withdrawn and a new decision rendered.

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 El 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 November 29, 2002, after the initial registration period for El Salvadorans had expired.

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 July 17, 2003, 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 establishing her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her TPS application. The record does not reflect that the applicant responded to the director's request. The director denied the application for lack of prosecution on February 3, 2004.

The applicant filed an untimely appeal that was not received at the California Service Center until February 25, 2008. The AAO rejected the untimely appeal on July 7, 2008; however, the notice inadvertently stated that the applicant was from Honduras instead of El Salvador as the applicant had claimed on her application.

A complete review of the record reflects that the applicant has established that she is a citizen of El Salvador; however, she has not established eligibility for late initial registration as a Salvadoran nor has she demonstrated that she has met the continuous residence and continuous physical presence criteria for Salvadorans.

On motion, the applicant states that she was only 15 years old when she came to the United States; however, this does not mitigate the applicant's failure to file her Form I-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). In addition, she has failed to submit sufficient evidence to establish the continuous residence and continuous physical presence criteria for El Salvadorans described in 8 C.F.R. §§ 244.2(b) and (c). The applicant's statements made on motion have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the director's decision to deny the application for TPS will be affirmed.

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 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.