



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **JAN 12 2007**

[REDACTED] consolidated herein]

[EAC 04 134 53558]

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:

[REDACTED]

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

The applicant is 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 that she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant's prior counsel submits a brief statement. Prior counsel indicates that he needs 90 days in which to submit a brief and/or evidence in support of the appeal. To date, no additional documentation has been received; therefore, the record is considered complete.

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 an initial Form I-821, Application for Temporary Protected Status, on May 21, 2001, during the initial registration period (EAC 01 200 54777 relates). The director denied the applicant's initial TPS application on April 24, 2003, for failure to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant filed a second Form I-821 on September 9, 2002, and indicated that she was re-registering for TPS or renewing her temporary treatment benefits (EAC 02 285 51229 relates). That application was also denied on April 24, 2003, because the applicant's initial application had been denied and the applicant was not eligible to apply for re-registration for TPS or renewal.

The applicant filed the current Form I-821 on March 29, 2004, and again indicated that she was re-registering for TPS or renewing her temporary treatment benefits. The director denied the application as an initial TPS application on July 19, 2004, because the applicant failed to establish her eligibility for late registration, and her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

Any Form I-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 for temporary treatment benefits, or as a new filing for TPS. If the applicant is filing an application for re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of 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.

The applicant's first and second Forms I-821 were denied on April 24, 2003. Therefore, the current application cannot be considered as an application for re-registration or renewal of temporary treatment benefits. This Form I-821 can only be considered as a new filing for TPS 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 is eligible for temporary protected status only if such alien establishes that she 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 § 244.3;
- (e) Is not ineligible under § 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.

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 El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States 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 the current Form I-821 with Citizenship and Immigration Services (CIS) on March 29, 2004, more than one year and six months after the initial registration period had ended.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he 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 must 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On May 7, 2004, the director requested the applicant to submit evidence establishing her eligibility for late registration. The applicant was also requested to submit evidence establishing her nationality and identity, and her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on July 19, 2004.

On appeal, the applicant's prior counsel states that the applicant is eligible for late registration, that she received voluntary departure in 1995, and can establish residency in the United States from at least February 2001.

A review of the record reveals that the applicant filed a Form I-589, Request for Asylum in the United States, on October 28, 1992. That application was denied on August 10, 1993. On October 30, 1995, an Immigration Judge

granted the voluntary departure on or before April 30, 1996, with an alternate order of deportation to El Salvador. There is no evidence contained in the record that the applicant departed as granted. Therefore, the order of deportation remains outstanding.

Based on a review of the documentation contained in the record, it is concluded that the applicant has submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. However, 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 will be affirmed.

An alien applying for Temporary Protected Status has the burden of proving that she 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.