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U.S. Citizenship  
and Immigration  
Services

MI

FILE:

Office: TEXAS SERVICE CENTER

Date:

AUG 04 2005

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and 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 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.

On appeal, the applicant submits a statement and additional evidence.

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 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. 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 with validity of the latest extension until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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 TPS application with Citizenship and Immigration Services (CIS), on September 15, 2003.

The burden of proof is upon the applicant to establish that 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or

application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

On January 7, 2004, 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 physical presence in the United States since March 9, 2001. In addition, the applicant was requested to submit photo identification or a national identity document from her country of origin bearing a photograph and/or fingerprint.

In response, the applicant submitted photocopies of the following documentation: her Employment Authorization document (EAD) from a prior designation of El Salvador for TPS benefits, under Category A12, with validity from October 3, 1991 through April 2, 1992; receipt notices and other documents from CIS; her Tennessee Identification Card issued on August 1, 2003; her California Identification Card issued on April 3, 1991; the biographic page of her El Salvadoran passport issued on November 15, 1988; her birth certificate, with English translation; an affidavit from the applicant's son-in-law attesting to the applicant's residence with their family; unsigned, (some undated), Internal Revenue Service (IRS) tax forms listing the applicant as a dependent on their taxes for the years 2000 through 2002; numerous medical statements and receipts in her name dated in the years 2001, 2002, and 2003; and, postmarked envelopes addressed to the applicant and dated in the year 2003.

The director determined that the applicant had failed to establish she was eligible for late registration, and denied the application on January 29, 2004.

On appeal, the applicant states that she currently has a hearing pending, but has not received further correspondence about the Order to Show Cause and Notice of Hearing. She asks that her record be checked and her case reconsidered. In support of the appeal, the applicant submits a partial copy of an Order to Show Cause, dated September 29, 1992, in her name and under this A-file number, and giving her address as located in Anaheim, California.

The applicant submitted evidence in an attempt to establish her eligibility for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2)(ii). However, the record does not reflect that at the time of this initial registration period, the applicant had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal that is pending or subject to further review or appeal. The record contains the original Order to Show Cause, dated September 29, 1992, on which the signature of the applicant and an immigration officer appear in the Certificate of Service section. The Order to Show Cause, however, was not signed by an Issuing Officer, and no hearing date was previously calendared and listed on the Order. An additional copy of the Order to Show Cause has "VOID" written across the document. The records of CIS do not reflect that the applicant was ever placed into proceedings and scheduled for a hearing before the immigration judge.

The record contains two CIS receipt notices for Form I-765, Application for Employment Authorization (EAD), dated February 1, 1996, and September 15, 1997, in which the applicant applied for employment authorization under Category C08, reserved for those with pending asylum applications. In a notice of decision dated October 13, 1997, the Director, California Service Center, denied the EAD applications stating that there was no indication that the applicant had ever been granted employment authorization under Category C08, or that she had any pending application for asylum. In a note dated October 24, 1997, handwritten on the denial notice, the

applicant states that she did have an application for asylum pending. The record, however, does not include any evidence that the applicant filed a Form I-589, Application for Asylum and Withholding of Deportation. The records of CIS also do not reflect any pending asylum application.

Finally, the record includes evidence that the applicant was granted employment authorization under the provisions of 274A.12(C)(11), the category for public interest parolees, with validity from January 2, 2004 through September 2, 2004. Under the provisions of 8 C.F.R. § 244.2(f)(2)(iii), an applicant who is a parolee or has a pending request for reparole may qualify for late initial registration. The record, however, reflects that the request was dated January 2, 2004, and thus, at the time of the initial registration period, from March 9, 2001, through September 9, 2002, the applicant was not a parolee.

The applicant has not submitted sufficient 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 temporary protected status will be affirmed.

It is noted that the applicant had been approved for TPS benefits in 1991 through 1992, under a prior designation of El Salvador for TPS, and also was granted extensions of Delayed Enforced Departure (DED) permitted for El Salvadorans through December 31, 1994.

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.