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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[LIN 03 260 50979]

Office: NEBRASKA SERVICE CENTER

Date: JUN 23 2005

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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 she was eligible for late initial registration.

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

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period. That application was denied on February 27, 2002, for failure to respond to a request for evidence to establish her eligibility for TPS. The applicant filed a motion to reopen the matter with the Nebraska Service Center on August 30, 2002. The director rejected the motion on October 30, 2002, because it did not meet the requirements for a motion or reopen.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 2, 2003. The director denied this second application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on August 20, 2001. That initial application was denied by the director on February 27, 2002. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a 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.

The applicant filed a subsequent Form I-821 on September 2, 2003. Since the initial application was denied on February 27, 2002, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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.

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 the current TPS application with Citizenship and Immigration Services (CIS) on September 2, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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).

On November 24, 2003, the applicant was requested to submit evidence establishing her eligibility for late initial registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her entry into the United States prior to February 13, 2001. The applicant, in response, provided evidence relating to her residence and physical presence in the United States. The applicant also submitted a letter dated August 21, 2003, from [REDACTED] stating that he and the applicant became engaged in June of 2001, and were married in Seattle, Washington, on April 12, 2003. [REDACTED] photocopies of three Employment Authorization Cards indicating he was granted TPS under CIS registration number A94 465 215.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on January 5, 2004.

On appeal, counsel for the applicant states that the applicant paid a notary public to assist her with filing her initial Form I-821 and Form I-765 applications in 2001. Counsel states that the director's request for additional evidence dated October 2, 2001, was mailed only to the notary public, but the notary failed to inform the applicant that he had received the request. Counsel states that the applicant did not intentionally abandon the initial TPS application, and that she never responded to the notice because she didn't know about it. Counsel states that the applicant filed a motion to reopen the matter on August 26, 2002. Counsel asserts that this motion is evidence that the applicant had a TPS application pending during the initial registration period.

Counsel appears to assert that the applicant qualifies for late initial registration because she had an application for TPS pending during the initial registration period. Counsel's assertion is not persuasive. The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens whose TPS applications have been denied to circumvent the normal application and adjudication process. Rather, these provisions were created to ensure that Temporary Protected Status benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2).

Counsel also provides a photocopy of a State of Washington marriage license indicating that the applicant and [REDACTED] both citizens of El Salvador, were married in Seattle, Washington on April 12, 2003, along with photocopies of employment authorization cards indicating that [REDACTED] has been granted TPS.

While the evidence of record confirms that the applicant's husband has been granted TPS, the record also shows that the applicant was not married until April 12, 2003. In order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). Since the applicant, during the initial registration period, was not the spouse of an alien currently eligible to be a TPS registrant, she is not eligible for late registration on this basis. The applicant has not submitted any evidence to establish that she has met any of the other 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.

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.