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U.S. Citizenship
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Services

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FILE:



[WAC 04 025 51455]

Office: CALIFORNIA SERVICE CENTER

Date:

NOV 02 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:



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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The matter will be remanded for further consideration and action.

The applicant claims to be 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 register in a timely manner."

On appeal, counsel 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 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.

The record shows that the applicant was apprehended by the United States Border Patrol near Calexico, California, on July 20, 1990. The applicant told the Border Patrol officers that she was a citizen of El Salvador, and that she was born in Canton La Joya, El Salvador, on May 18, 1971. At the time of her apprehension, she did not have any document in her possession identifying her as a citizen of El Salvador. She told the apprehending officers that she had never been issued a passport, birth certificate, baptismal certificate, or any other national identity document. She was issued a notice to appear for a deportation hearing before an Immigration Judge at a date and time to be determined, and released on her own recognizance. When the applicant failed to appear for her deportation hearing on November 16, 1993, the Immigration Judge ordered that the applicant be deported to El Salvador in absentia.

On July 3, 2000, the applicant filed a Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to section 203 of Public Law 105-100 (NACARA)). Her Form I-881 application was denied on June 13, 2003, because the applicant was subject to an outstanding final order of deportation or removal. The applicant was informed that, in order to qualify for suspension of deportation or Special Rule Cancellation of Removal under NACARA, she was required to file a motion to reopen with the Immigration Court having jurisdiction over the previous deportation or removal proceedings on or before September 11, 1998. The applicant was further informed that if she missed this statutory deadline, she could still submit a motion to reopen if the District Counsel for the jurisdiction in which her case was heard agreed to join in the motion or if the final order in her case was issued in absentia. On February 10, 2004, counsel for the applicant filed a Motion to Reopen and Rescind an Absentia Order of Deportation and Request for Stay of Deportation with the Executive Office of Immigration Review (EOIR). On May 6, 2004, the EOIR reopened the matter. To date, the matter is still pending before the Board of Immigration Appeals (BIA).

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 applicant submitted her initial Form I-821, Application for Temporary Protected Status, to the California Service Center on July 30, 2003, within the 60-day period of the denial of her application for suspension of removal under NACARA. She indicated on Part 1 of the TPS application, "This is my first application to register for Temporary Protected Status."

The applicant was sent a form letter from the California Service Center on August 6, 2003 stating, "[p]lease provide a copy of the receipt notice of your previously filed I-821 application and below that a handwritten notation, "The fee for I-765 is \$120.00."

The applicant responded to this notice on October 14, 2003. The applicant wrote on the form, "NOTE I don't have the receipt notice of my previously filed I-821 because [this] is my first time - is late initial registration."

The applicant was sent a second form letter on October 21, 2003, this time stating, "[y]our application did not meet the deadline for re-registration for El Salvador Temporary Protected Status as it was not received or postmarked on or before September 10, 2002. FEE for filing I-765 is \$120.00; FEE for filing I-821 \$50.00 for Finger Print \$50.00." The California Service Center stamped the application indicating that it was properly filed on November 4, 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).

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on March 3, 2004.

On appeal, counsel asserts that the applicant qualifies for late initial registration because she had a pending asylum application and application for suspension of deportation under NACARA. Counsel states that the applicant has filed a motion to reopen the denial of her application for suspension of deportation under NACARA.

As previously stated, in order to qualify for late initial registration, the applicant was required to submit the application for TPS during the 60-day period immediately following the denial of her Form I-881. The applicant attempted to submit her Form I-821 on July 30, 2003, within the required 60-day period as an application under the late initial filing provisions under 8 C.F.R. 244.2(f)(2)(ii) and (g).

In view of the foregoing, it is concluded that the applicant qualifies for late initial registration because she submitted her TPS application in accordance with the provisions of 8 C.F.R. 244.2(f)(2) and (g). Therefore, the applicant has overcome the sole reason for the denial of the application.

However, the application may not be approved at this time. The record does not contain any evidence to establish the applicant's nationality and/or identity. While she has presented herself as [REDACTED] a citizen of El Salvador, since her arrival in the United States in 1990, the record contains no evidence of her identity and nationality in the form of a national identity document, passport or other acceptable evidence as set forth at 8 C.F.R. § 244.2(f)(2) and (g).

The director shall provide the applicant with an opportunity to submit evidence of nationality and shall issue a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The matter is remanded for further consideration and action.