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U.S. Citizenship and Immigration Services

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OCT 2 4 2005

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
[WAC 05 211 74640]

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.

Cindy M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), and is now on appeal before the Administrative Appeals Office (AAO). 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 as an application for annual re-registration on the basis that a previous TPS application had been denied.

On appeal, counsel for the applicant submits a brief and additional documentation.

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, (LIN 01 179 50658 relates), on May 1, 2001, with the Nebraska Service Center (NSC) during the initial registration period. On July 5, 2001, the director forwarded the applicant a request, at the address indicated on her application, to submit evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The record reflects that the applicant failed to respond to the director's request.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The director of the NSC denied the applicant's first TPS application on November 19, 2001, for failure to respond to the request for evidence. Since the application was denied due to abandonment there was no appeal available; however, the applicant was advised that she could file a request for a motion to reopen within 33 days from the date of the director's denial. The applicant did not file a timely motion to reopen; her motion was not submitted until August 15, 2002. On January 8, 2003, the director dismissed the motion and reaffirmed his decision to deny the application.

The applicant filed a second Form I-821 (LIN 04 094 50124 relates) on February 17, 2004, more than one year and five months after the initial registration period had expired. On March 3, 2004, the director forwarded the applicant a request, at the address indicated on her application, to submit evidence to establish her eligibility for late registration. The record reflects that the applicant failed to respond to the director's request.

The director denied the applicant's second Form I-821 on May 4, 2004, because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for late registration. The applicant was advised that she could file an appeal of that decision within 33 days. The record reflects that the applicant did not file an appeal.

The applicant filed this third Form I-821 with the CSC on April 9, 2005. The director of the CSC denied this third application as an application for annual re-registration on the basis that the applicant's first Form I-821 had been denied.

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 as a new filing for TPS benefits. If an applicant is filing an application for annual re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must re-register annually. In addition, the applicant must continue to maintain the conditions of TPS eligibility. 8 C.F.R. § 244.17.

Since the applicant's initial Form I-821 was denied on November 19, 2001, and her second Form I-821 was denied on May 4, 2004, the instant application cannot be considered as an application for annual re-registration. This Form I-821 can only be considered as a new filing for TPS benefits 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 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 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 since March 9, 2001. The required initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. As previously discussed, the applicant filed this Form I-821 on April 29, 2005, more than two years and seven months after the initial registration period had ended.

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 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 appeal, counsel asserts that the applicant is eligible for late registration because she had filed an initial TPS application on May 1, 2001, during the initial registration period. Counsel also asserts that the applicant is eligible for late registration because she is the spouse of an alien currently eligible to be a TPS applicant.

The provisions for late registration detailed in 8 C.F.R § 244.2(f)(2) were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created to ensure that TPS 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 [and/or subsequently denied] does not render an alien eligible for late registration under 8 C.F.R § 244.2(f)(2).

Furthermore, a review of the alien registration file belonging to the applicant's spouse, reflects that his initial Form I-821 was denied on February 27, 2002, a second Form I-821 was denied on June 4, 2004, and a third Form I-821 was denied on June 6, 2005. Therefore, he does not qualify as an alien currently eligible to be a TPS registrant.

The record confirms that the applicant filed the instant Form I-821 after the initial registration period had expired. Since the applicant's first Form I-821 was denied, this Form I-821 cannot be considered as an application for annual re-registration. This application can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period. In this case, the applicant has not met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the 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.