



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:
[WAC 05 203 76746]

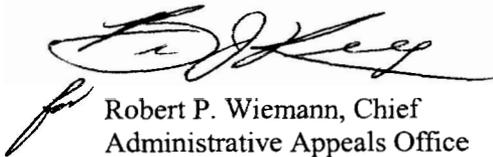
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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, Chief
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 appeal will be dismissed.

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 record reveals that the applicant filed a TPS application during the initial registration period on April 23, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 187 53139. The director denied that application on March 1, 2004, because the applicant had failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. On May 21, 2004, the director rejected the applicant's appeal, filed on May 5, 2004, because the appeal was untimely filed (more than the required 30 days from the date of the denial), and the motion did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. 103.5(a)(2) and (3).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 21, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application on September 2, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant requests that her case be reopened because she needs her Employment Authorization Card to continue working in this country. She states that she does not know why the Form I-797C, Notice of Action, dated September 2, 2005, states that her application for asylum had been denied since she never applied for asylum, but rather, she has "always been registered under the TPS [S]alvadoran program."

It is noted that the director incorrectly stated on Form I-797C, that the applicant's Form I-765, Application for Employment Authorization, filed on April 25, 2005, was based on a pending Form I-589, Request for Asylum in the United States, but that no record was found to establish that the applicant has a pending application for asylum. As maintained by the applicant, the Form I-765 was based on her application for TPS rather than on an application for asylum.

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.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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 initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed the current application with CIS on April 21, 2005.

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 he or 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 his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

It is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

It is noted that the record of proceeding contains an approved Form I-130, Petition for Alien Relative, filed on the applicant's behalf by her United States citizen husband.

ORDER: The appeal is dismissed.