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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: Nebraska Service Center Date: MAR 27 2006
[LIN 03 248 51157]

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.

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 submit evidence to establish she was eligible for late registration. The director also denied the application because the applicant failed to establish her "residence in the United States since February 13, 2001", and her continuous physical presence in the United States since March 9, 2001.

On appeal, counsel, on behalf of the applicant, asserts the applicant's claim of eligibility for TPS and submits additional evidence in support of her claim.

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 [WAC 01 167 51830] for TPS on March 22, 2001, during the initial registration period. On August 15, 2001, the applicant was requested to submit evidence to establish that she is a national or citizen of El Salvador. In addition, the applicant was requested to submit a copy of her birth certificate. The applicant was also requested to submit evidence that to establish her continuous residence and continuous physical presence in the United States during the requisite time periods. On November 2, 2001, the applicant responded to the director's August 15, 2001, request. The director determined that the evidence submitted was insufficient to establish her nationality as well as her continuous residence and continuous physical presence in the United States during the qualifying time periods. Therefore, the director denied the application on June 4, 2002. The applicant could have filed an appeal from the director's decision within 30 days from the date of the denial. The applicant did not file an appeal during the requisite timeframe.

The applicant filed a second Form I-821, Application for Temporary Protected Status, on February 28, 2003. The director denied this application [LIN 03 119 50339] on October 14, 2003, because the applicant failed to respond to the director's request for evidence in order to establish her eligibility for TPS late registration as well as her qualifying continuous residence and continuous physical presence in the United States. The applicant could have filed an appeal from the director's decision within 30 days from the date of the denial. The applicant did not file an appeal during the requisite timeframe.

The applicant filed a third Form I-821, Application for Temporary Protected Status, on August 15, 2003. The director denied the instant application [LIN 03 248 51157] on December 11, 2003, because the applicant failed to respond to the director's request for evidence in order to establish her eligibility for TPS late registration as well as her qualifying continuous residence and continuous physical presence in the United States.

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 he 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 TPS application was properly filed on March 22, 2001. The initial application was denied by the director on June 4, 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 the instant Form I-821 on August 15, 2003. Since the initial application was denied on June 4, 2002, the subsequent application cannot be considered as a re-registration. Therefore, the instant 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.

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 in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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).

On October 14, 2003, 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 "residence in the United States since February 13, 2001", and her continuous physical presence in the United States from March 9, 2001. The applicant was also requested to submit a copy of her birth certificate or passport. The applicant did not respond to the director's October 14, 2003, request; therefore, the director

denied the application on December 11, 2003. It is noted that the director's request was sent to the applicant's last known address at

On appeal, counsel, on behalf of the applicant, states that the applicant did not respond to the director's request for evidence dated August 15, 2001, with regards to her initial TPS application, because the notary she hired advised her not to respond. However, as stated previously, the applicant did respond to the director's request. The director denied her initial application because the evidence submitted failed to establish her qualifying continuous residence and continuous physical presence in the United States. In addition, the applicant failed to provide sufficient evidence to establish that she is a national or citizen of El Salvador.

Further, counsel states that the applicant did not provide supporting documentation along with her second and third application as noted above. A review of the record reflects that the applicant had submitted some evidence along with her applications in an attempt to establish her eligibility for TPS. The evidence was insufficient to establish her eligibility for TPS; therefore, the director requested additional documentation in support of her claim. The applicant, however, failed to respond to the director's requests for additional evidence.

The first issue in this proceeding is whether the applicant has established her qualifying continuous residence and his continuous physical presence in the United States during the requisite time periods.

A review of the record also reflects that the applicant had submitted along with her TPS application the following documentation in support of her qualifying continuous residence and continuous physical presence in the United States: a copy of a letter dated June 29, 2000, from the IRS regarding her Individual Tax Identification Number; an employment letter from Front Desk Manager for Ramada Inn, who stated that the applicant had been an employee from February 16, 2000 to July 16, 2003; copies of her medical billing statements from Dixie Regional Health Center dated June 30, 2001 and July 31, 2001; copies of billing statements from the Southern Utah Women's Health Center, Inc. dated June 24, 2001, July 26, 2001, August 17, 2001, September 21, 2001, October 19, 2001, November 20, 2001, and December 4, 2001.

On appeal, counsel also asserts that the applicant had entered the United States in March 1999, and she had resided continuously in the United States since that time. In support of this claim, counsel also provides the following: copies of the applicant's Federal and State income tax returns for the years 2001 and 2002; copies of Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for the years 2001 and 2002; a copy of an Account Relationship Inquiry dated January 26, 2004, reflecting that the applicant opened two accounts on April 24, 2001; a copy of a Deposit Inquiry dated January 26, 2004, indicating that she opened a checking account on July 3, 2003; copies of nine earnings statements from East Ridge Motel Company reflecting pay periods dated October 15, 2001 to April 30, 2003; copies of billing statements from the Southern Utah Women's Health Center, P.C. indicating dates of service from June 25, 2001 to November 20, 2001; a copy of the birth certificate for her son born on January 1, 2002; a copy of the applicant's Employment Authorization Card valid from May 12, 2001 to September 9, 2002; and, a copy of the applicant's Utah Identification Card issued on January 31, 2001.

A review of the evidence establishes that she has continuously resided in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001, to the date of filing

the instant application. Therefore, the director's decision to deny the application based on these issues is withdrawn.

The second issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed the instant application after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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.

On appeal, counsel asserts that the applicant is eligible for TPS late registration because the applicant had a TPS application pending before the Service. However, a pending application for TPS is not an application for relief from removal.

Along with her TPS application, the applicant submitted a copy of an employment authorization card of Ms. bearing an eligibility category of "A12". Service regulations may allow the child of an alien currently eligible to be a TPS registrant to file an application after the initial registration period; however, section 101(b)(1) of the Act defines the term "child" as an "unmarried person under twenty-one years of age." Evidence of record reveals that the applicant (who was born on October 10, 1977) was 25 years old during the initial registration period and, therefore, cannot be considered a "child" for immigration purposes. It is also noted that according to the applicant's El Salvadoran birth certificate, her mother's name is The applicant has not established that one and the same person.

A review of the record of proceedings reflects that the applicant has not submitted sufficient evidence to establish that she has met <u>any</u> 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 TPS late registration will be affirmed, and the applicant remains ineligible for TPS.

It is noted that the applicant was placed in removal proceedings on February 28, 1999, based on her apprehension by the United States Border Patrol at Calexico, California on February 27, 1999.

An alien applying for TPS 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.