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U.S. Citizenship
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Services

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FEB 28 2007

FILE:



OFFICE: California Service Center

DATE:

and

– consolidated herein]

[WAC 05 141 81172]

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:

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. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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 registration.

On appeal, the applicant claims that she is eligible for late registration because she has had a pending asylum application since 1993 and meets the other requirements for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS if such alien establishes that he or she:

- (a) Is a national of a 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 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 who are El Salvadoran nationals must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002.

The record reveals that the applicant filed her initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on January 30, 2005. On December 13, 2005, the director denied the application on the ground that it was not filed during the initial registration period and did not qualify for late registration under 8 C.F.R. § 244.2(f)(2) and (g).

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) above. The applicant asserts that she meets the condition described at 8 C.F.R. § 244.2(f)(2)(ii) because she has had a pending asylum request since 1993.

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. See 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. See 8 C.F.R. § 244.9(b).

The record shows that the applicant filed her first Request for Asylum in the United States (Form I-589) in August 1988. The request was denied and on October 29, 1991 the legacy Immigration and Naturalization Service (INS) issued a warrant of deportation. The applicant (whose file number at that time was [REDACTED]) was ordered to report on November 19, 1991, for deportation to El Salvador, but she failed to do so. The record indicates that the applicant stayed in the United States and filed a second Request for Asylum on April 12, 1993.

In November 1999 the applicant filed an Application for Suspension of Deportation or Special Rule Cancellation of Removal (Form I-881) pursuant to the Nicaraguan Adjustment and Central American Relief Act (NACARA). That application was dismissed by CIS on May 24, 2004, which found that the applicant was ineligible for NACARA benefits because she was subject to an outstanding final order of deportation or removal and there was no evidence that she had filed a motion to reopen with the Immigration Court having jurisdiction over her previous deportation or removal proceedings. The notice of dismissal concluded by advising the applicant that “[i]f you have not been granted asylum, the previous order of deportation or removal may be enforced against you and you may be removed from the United States.”

The CIS decision of May 24, 2004, makes clear that the applicant’s request for asylum has been denied and that she is subject to the outstanding deportation order of October 29, 1991. Since the qualifying condition for late TPS registration which the applicant claims under 8 C.F.R. § 244.2(f)(2)(ii) – *i.e.*, an application for asylum or

relief from removal which is pending or subject to further review or appeal – was terminated by the CIS decision on May 24, 2004, the applicant was required to file a TPS application within 60 days – that is, by July 23, 2004 – to meet the deadline prescribed in 8 C.F.R. § 244.2(g). Since the applicant did not file her TPS application until January 30, 2005, she does not qualify for late registration. Therefore, the decision of the director will be affirmed.

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.