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U.S. Citizenship
and Immigration
Services

MI



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 23 2007

[WAC 05 118 74564]

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 California Service Center. Any further inquiry must be made to that office.

for 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 is stated to be 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 record reveals that the applicant filed a TPS application on May 22, 2001, under receipt number SRC 01 215 54553. On May 25, 2004, a request for evidence was sent to the applicant, requiring the applicant to submit a Form I-601, Application for Waiver of Grounds of Excludability, for the February 20, 1996 misrepresentation/fraud at the border charge suffered by the applicant. The record does not contain a response from the applicant; therefore, the Texas Service Center director denied the application on September 16, 2004, after determining that the applicant had abandoned her application. There is no appeal from a denial due to abandonment; however, the applicant could have filed a motion to reopen within 30 days of the date of the denial notice. The record does not reflect that the applicant filed a motion within the allotted timeframe.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 26, 2005, and indicated that she was re-registering for TPS.

The California Service Center director denied the re-registration application 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 states she timely applied for TPS and has received Employment Authorization Documents (EAD). She claims that she has never filed for asylum and does not understand the denial of her Application for Employment Authorization (I-765) based on there not being a pending asylum application. The Notice of Decision on the I-765 erroneously stated that the denial was based on the lack of a pending asylum application; however, the I-765 was denied based on the denial of the applicant's TPS application. It is noted that the applicant did file two asylum applications, one in 1996 and one in 1998. The applicant appeared before an immigration judge on June 17, 1996, and her application for asylum filed in 1996 was denied. The asylum application filed in 1998 was administratively closed on May 29, 1998. The applicant's initial TPS application was denied because she failed to submit a Form I-601, when requested by the director. It is noted that the request for evidence was sent to the last known address for the applicant.

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 Salvador was from March 9, 2001 to September 9, 2002. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on January 26, 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 the record reflects that the applicant was previously deported from the United States to El Salvador on June 26, 1996.

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.

ORDER: The appeal is dismissed.