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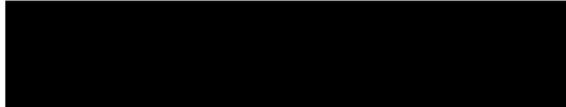
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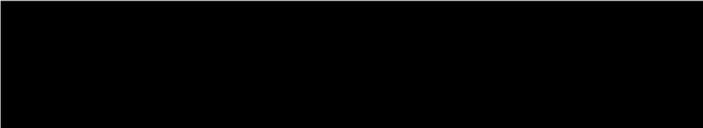
JUL 30 2007

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:



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. Wienmann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Houston, Texas. A subsequent motion to reopen was denied by the District Director. The case 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 record indicates that the applicant filed an initial TPS application on March 18, 2004, after the initial registration period for El Salvadorans (from March 9, 2001 to September 9, 2002) had closed. The district director denied the application on September 24, 2004, because the applicant had failed to establish that she was eligible for late registration. The district director noted that although the applicant had a pending Form I-485 (Application to Register Permanent Residence or Adjust Status) during the initial registration period for El Salvadorans, the Form I-485 was denied on October 14, 2003, and the applicant failed to file her TPS application within the 60-day time period required by 8 C.F.R. § 244.2(g).

On October 20, 2004, counsel filed a motion to reopen the director's decision. She asserts that neither her office nor the applicant knew, or had reason to know, of USCIS' denial of the Form I-485, although the applicant did attend her adjustment of status interview in October 2003, but no decision was made at that time, and no notice was received of the alleged decision. She states that in December 2003, her office received a notice of intent to deny the applicant's petition (Form I-130); however, as of December 2003, her office still believed that the adjustment of status was still pending. Counsel further asserts that on February 17, 2004, her office received a response to the Freedom of Information Act (FOIA)/Privacy Act (PA) request, and it was then that they learned for the first time that USCIS had denied the applicant's application for permanent residence, and that they promptly prepared and mailed the TPS application, clearly within the required 60-day period.

The district director denied the motion [the decision was undated] because the applicant had failed to establish any basis upon which the motion can be granted. The district director noted that although counsel alleged that the denial of the Form I-485 dated October 14, 2003, was never received, the Form I-821 TPS application and the Form G-28 (Notice of Entry of Appearance as Attorney or Representative) were both dated December 22, 2003, even though they were not filed until March 18, 2004. He further noted that although the applicant alleged to have received the Notice of Intent to Deny (NOID) the visa petition (Form I-130) in December 2003, the NOID was never dated and mailed; rather, it was received by the applicant pursuant to the February 1, 2004 FOIA request.

On appeal, received on December 28, 2004, counsel reasserts the contention that the applicant did not receive her I-485 denial, that their office discovered the denial in the applicant's FOIA, and that the office moved quickly and completed a TPS application within 60 days [of the receipt of the FOIA dated February 14, 2004]. Counsel asserts that the facts pointed out in the district director's decision are immaterial to what is at hand; "similarly it points out that the denial of the I-485 was never mailed but was contained in our FOIA request. This fact "only buttresses our case; because we allege that we did not receive the I-485 denial from the Service, but only discovered it from our FOIA request."

The record of proceeding was reviewed and reflects the following:

1. Form I-130, Petition for Alien Relative, was filed on April 30, 2001, on behalf of the applicant by her United States citizen spouse, [REDACTED]. An undated Notice of Intent to Deny (NOID) the visa petition is contained in the record. It appears that the NOID was prepared or written subsequent to the October 14, 2003 interview (see No. 2 below). There is no indication that this NOID was mailed to the applicant's spouse or to the attorney. It is noted that the NOID granted the applicant's spouse

60 days in which to establish that his marriage to the applicant was bona fide, that he had not engaged in a sham marriage, or marriage of convenience, contracted solely for the purpose of conferring immigration benefits upon the applicant.

2. Form I-485, Application to Register Permanent Residence or Adjust Status, was filed by the applicant on June 26, 2001, during the TPS initial registration period for El Salvadorans. On October 14, 2003, the applicant and her spouse appeared at the Houston district office for an interview regarding the application for adjustment of status. During the interview, it was noted that the applicant had been ordered deported (removed) from the United States on March 27, 1997.¹ The district director, therefore, determined that the applicant was statutorily ineligible for adjustment of status under section 245(a)(3) of the Act because an immigrant visa was not immediately available to her, and she had not been found qualified for any immigration preference. He further determined that the applicant was inadmissible to the United States for not being in possession a valid labor certification as required by section 212(a)(5)(A) of the Act, and not having established that she was exempt such certification. The district director denied the application for permanent residence on October 14, 2003, the date of the applicant's interview. The applicant signed her name on the bottom of the denial decision as evidence that she was advised of the denial; it appears she was also provided a copy on that date. The notice also shows that a "'cc:" (copy) was sent to the attorney.
3. On February 1, 2005, a Notice of Intent to Deny the visa petition (Form I-130) was issued. The NOID granted the applicant's spouse 30 days in which to submit evidence to establish that his marriage to the applicant was bona fide, that he had not engaged in a sham marriage, or marriage of convenience, contracted solely for the purpose of conferring immigration benefits upon the applicant. Counsel responded to the NOID on March 3, 2005. On October 31, 2006, the Form I-130 was approved, and the applicant's spouse was advised that the approved visa petition had been sent to the National Visa Center in Portsmouth, New Hampshire.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2)

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 Citizenship and Immigration Services (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 record indicates that the Form I-485 was denied on October 14, 2003, the date the applicant and her spouse were interviewed. Counsel's assertion that neither her office nor the applicant "knew, or had reason to know," of the denial of the Form I-485, although the applicant "did attend her adjustment of status interview on October 2003, but no decision was made at that time," and no notice was received of the alleged decision, is not persuasive. As detailed in No. 2 above, the record indicates that the applicant was advised of the denial of her application for adjustment of status the day of her interview; the applicant signed the district director's decision dated October 14, 2003, as acknowledgment of the denial. As provided in 8 C.F.R. §

¹ In removal proceedings held on March 26, 1997, the application failed to appear. Therefore, the Immigration Judge (IJ) ordered the applicant deported from the United States. The IJ also added that the applicant "is deportable for failure to file the application for relief timely." On April 30, 1997, in Houston, Texas, a Warrant of Deportation, Form I-205, was issued.

244.2(g), the applicant had a 60-day period immediately following the denial of the application for adjustment of status, or immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2)(ii), to file an application for late registration under TPS. The TPS application, in this case, was not filed until March 18, 2004.

While it is noted that the Form I-130 petition was subsequently approved on October 31, 2006, (see No. 3 above) the Form I-130, alone, does not convey eligibility for TPS.

The applicant has failed to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the TPS application 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.