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**U.S. Citizenship
and Immigration
Services**

ML



FILE: [REDACTED]
[EAC 06 321 75108]

Office: VERMONT SERVICE CENTER

Date: NOV 05 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: 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 Director, Vermont Service Center (VSC), denied the application. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who seeks 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. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States.

On appeal, the applicant asserts that she has been physically present in the United States since before February 13, 2001.

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 as designated by the Attorney General is eligible for temporary protected status 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of Homeland Security, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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 reflects that the applicant filed a TPS application on August 17, 2006 – almost four years after the close of the initial registration period for Salvadorans. The director accepted the application under the late filing provisions in 8 C.F.R. § 244.2(f)(2). In support of her application, the applicant submitted the following photocopied documentation:

1. The identification page of her Salvadoran passport, issued in Long Island, New York, on January 31, 2002;
2. Her son's U.S. birth certificate, indicating that he was born on September 16, 2000, in Islip, New York;
3. Her daughter's U.S. birth certificate, indicating she was born on October 22, 2002, in Islip, New York;
4. Employment Authorization Documents (EAD), indicating she had obtained EAD's through a pending asylum application from January 19, 1999, through April 9, 2006;

- and,
5. An application for an EAD based on a pending asylum application dated March 10, 1999, and related correspondence.

On December 14, 2006, the director requested that the applicant provide evidence to establish her eligibility for late registration under 8 C.F.R. § 244.2(f). The director also requested that the applicant submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The director noted that it appeared the applicant had an application for adjustment of status pending, but that this was not enough to establish her qualifying residence and physical presence. In response, the applicant submitted a copy of an EAD application dated November 20, 1998, and resubmitted the copies of her EADs and her son's birth certificate.

On March 26, 2007, the director denied the application, determining that the applicant had established that she was a citizen of El Salvador, but had failed to establish she was eligible for late registration and had failed to establish her qualifying continuous residence and continuous physical presence.

The applicant has submitted documentation that establishes that she renewed her Employment Authorization Document (EAD) as a dependent on her mother's asylum application from January 1999 until April 9, 2006. In addition, the applicant filed the current application on August 17, 2006. The applicant has submitted sufficient evidence to establish that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. 244.2(b) and (c). Consequently, the director's decision to deny the application on this ground will be withdrawn.

The record reflects that the applicant's mother, [REDACTED] [REDACTED], filed a Form I-589, Application for Asylum and for Withholding of Deportation, in which the applicant was identified as a dependent child, at the VSC on September 25, 1995. CIS records confirm that the applicant received employment authorization every year from 1999-00 to 2005-06, based on the asylum application filed by her mother. On August 24, 2004, the applicant turned 21 years old, but continued to receive EADs as the dependent child of an asylum applicant. On January 27, 2005, the New York Asylum Office interviewed the applicant's mother in regard to the asylum application. On September 1, 2005, the applicant's mother withdrew her asylum application and the New York Asylum Office administratively closed it. Therefore, the applicant ceased to be a dependent on her mother's asylum application on September 1, 2005. The record reflects that CIS continued to treat the applicant as an applicant for asylum after she turned 21 until the date her mother's asylum application was withdrawn and administratively closed. This treatment is consistent with § 208(b)(3)(B) of the Act, 8 U.S.C. § 1158(b)(3)(B), as amended by the Child Status Protection Act of 2002. Thus, the director erred in finding that the applicant was ineligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii).

The application for TPS cannot be approved, however, because it was not filed within 60 days of the termination of her mother's asylum application. As previously discussed, the asylum application was withdrawn and administratively closed on September 1, 2005. The applicant did not file her TPS application until August 17, 2006 – which was almost one year later. Thus, even though the asylum application was a qualifying condition for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii), the applicant did not file her TPS application within the 60-day period immediately following the termination of the asylum application, as required under 8 C.F.R. § 244.2(g). Accordingly, the TPS application must be denied because it was not filed within the time frame prescribed in 8 C.F.R. § 244.2(g).

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 that burden.

ORDER: The appeal is dismissed.