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U.S. Citizenship
and Immigration
Services

MI



FILE:



Office: California Service Center

Date:

SEP 04 2007

[WAC 05 134 74739]

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 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 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 reveals that the applicant filed an initial TPS application on July 31, 2002, under Citizenship and Immigration Services (CIS) receipt number SRC 02 237 53621. The Director, Texas Service Center, denied that application on March 4, 2004, because the applicant's response to the March 1, 2003 notice of intent to deny her application did not include sufficient evidence to establish her continuous residence and continuous physical presence in the United States, and her nationality and identity. The record does not reflect that the applicant appealed the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 12, 2005, under CIS receipt number WAC 05 134 74939, and indicated that she was re-registering for TPS. The director denied the re-registration application on September 19, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

On appeal, counsel submits photocopies of: 1) A CIS I-130 Approval Notice, dated July 19, 2005; 2) A letter from the Board of Immigration Appeals (BIA), dated April 20, 2001, informing the applicant of TPS designation for El Salvadorans; 3) A letter from the Board of Immigration Appeals dated June 26, 2001, stating that the applicant's appeal before the BIA was administratively closed. 4) A denial notice, dated September 19, 2005; 5) A marriage certificate, dated February 13, 2001; 6) An Arkansas Non Driver Identification card, issued on February 18, 2000; and, 7) A birth certificate, dated April 18, 2002.

With the appeal, counsel submits a copy of a case status, for CIS receipt number SRC 02 237 53621, from the CIS website. While counsel asserts that the applicant's initial TPS application is still pending based on information contained in the CIS case status computer printout, as noted above, the applicant's initial application was denied on March 4, 2004, and the denial notice was sent to the applicant at counsel's current address.

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 Salvadorans 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 May 12, 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 also provided a copy of Form I-797 which indicates that the applicant was the beneficiary of an approved I-130, Petition for Alien Relative. The record does not contain evidence that the applicant filed an Application for Adjustment of Status to Permanent Residence (Form I-485) based on an approved Form I-130, and that an adjustment of status application was pending during the initial registration period. The Form I-130 is not an application for adjustment of status and, alone, does not convey eligibility for late initial registration for TPS.

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 applicant has not submitted sufficient evidence to establish her nationality and identity. The applicant has furnished a copy of a birth certificate and English translation; however, she has not submitted a national identity document from her country bearing a photograph and or/fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provision of 8 C.F.R. § 244.9(a)(1). Therefore, the application must also be denied for these reasons.

It is further noted that the record of proceedings reveals that the applicant's asylum application was referred to the immigration judge, the applicant was placed in removal proceedings, and on March 28, 2000, an Immigration Judge granted the applicant voluntary departure in lieu of Removal on/or before May 30, 2000, with an alternate Order of Removal, if the applicant failed to depart the United States as required. A subsequent appeal to the Board of Immigration Appeals was administratively closed on June 26, 2001. In closing the proceedings, the BIA noted that it appeared from the record before the BIA that the applicant may be eligible to apply for TPS as a national of El Salvador. However, the record of proceeding reflects that the applicant has not established eligibility for TPS.

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.