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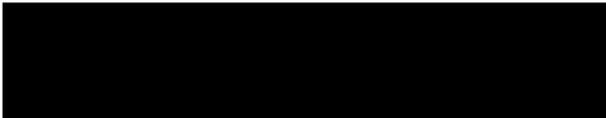
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U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

KA



FILE:



Office: VERMONT SERVICE CENTER

Date: **SEP 10 2007**

[EAC 06 350 72227]

IN RE:

Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the 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.

A handwritten signature in black ink, appearing to read "Robert P. Wemmann".

Robert P. Wemmann, 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 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 during the requisite periods.

On appeal, the applicant asserts that she needs to work to help support her family. The applicant further asserts that she did not previously submit evidence of her presence in the United States because she was not in legal status and was afraid she would be deported.

The record reveals that the applicant did file an initial application for TPS during the initial registration period. That application was denied on April 9, 2003 for failure to respond to a request for evidence (RFE) to establish her eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant was informed that she could file a motion to reopen within 30 days from the date of the denial. The applicant was informed that a motion to reopen had to be filed with evidence that the director's decision was made in error based on one of three specific criteria. The applicant filed a timely motion to reopen, but did not establish any of the required criteria. The director dismissed the motion to reopen on July 24, 2003. The applicant also filed a motion on June 14, 2004 that the director dismissed on July 22, 2004.

The applicant filed the current TPS application on August 21, 2006. The director denied the application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the basis for denial.

The applicant's initial Form I-821 was properly filed on August 6, 2001. The director denied that initial application on July 24, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, the applicant must have been previously granted TPS, as only those individuals who are granted TPS can re-register. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed the current application on August 21, 2006. Since the initial application was denied on July 23, 2004, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 only 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.

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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the application under review was filed on August 21, 2006. To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

On January 16, 2007, the director requested that the applicant submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director also requested that the applicant submit evidence establishing her continuous residence in the United States from February 13, 2001, to the date of filing and her continuous physical presence since March 9, 2001. In response, the applicant submitted a letter from [REDACTED] stating that the applicant was a student of his from January 2001 to June 2003.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on March 7, 2007. On appeal, the applicant asserts that she needs to legalize her status in order to support her family and submits the following:

- The Maryland birth certificate of her daughter, born on May 2, 2002;
- Her Maryland marriage certificate dated August 4, 2003;
- Hospital bills dated 01/08/02, 04/04/02, and 05/04/02;
- A 2001 tax return filed jointly with her spouse but only containing an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for her spouse; and,
- Two employment authorization documents, dated 08/29/01 and 09/10/02.

The evidence submitted by the applicant does not overcome her failure to file her TPS application within the initial registration period. To qualify for late registration, the applicant had to have been married to her spouse during the initial registration period, that is, during or before March 9, 2001 through September 9, 2002. The applicant did not marry her husband until August 4, 2003. Therefore the qualifying relationship did not exist during the requisite time period. This evidence does not overcome the applicant's failure 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 application for TPS will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence.

The evidence submitted fails to establish the applicant's qualifying residence and continuous physical presence. Except for the letter from [REDACTED], all of the evidence is proof of residence and continuous physical presence after August 6, 2001. It does not establish that the applicant continuously resided in the United States from February 13, 2001 and that she was continuously physically present since March 9, 2001. The letter from [REDACTED] can be given little evidentiary weight and has little probative value. The letter is not sworn to under penalty of perjury, does not provide [REDACTED]'s date and place of birth, and does not provide detailed information about the nature of the classes the applicant took with him. For example, were these classes held at a school or were they private lessons given by [REDACTED] [REDACTED] did not provide information about the location of the classes or where the applicant was living at the time she took these classes from him.

The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

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 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.