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U.S. Citizenship
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Services

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SEP 20 2007

FILE:



Office: VERMONT SERVICE CENTER

Date:

[EAC 06 144 70067]

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 during the requisite periods.

On appeal, the applicant asserts that she qualifies for late registration through her spouse and that she has been continuously residing and continuously physically present for the required time period.

Although a Form-G28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or § 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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.

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.

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 her initial TPS application with CIS on February 5, 2006 - almost four years after the close of the initial registration period for Salvadorans. The director accepted the application under the late filing provision in 8 C.F.R. § 244.2(f)(2). On July 19, 2006, 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 additional 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. The applicant submitted various documents in response to the director's request, including her marriage certificate showing that she married [REDACTED] on April 8, 2004, in Prince William, Virginia and proof that her husband was a TPS registrant. On September 27, 2006, the director determined that the applicant had failed to establish she was eligible for late registration, that the applicant had

failed to establish her qualifying continuous residence and continuous physical presence, and, denied the application.

On appeal, the applicant submits previously submitted documents.

The documents submitted by the applicant do not overcome her failure to file her TPS application within the initial registration period. The applicant married her husband on April 8, 2004 - over two years after the initial registration period. Therefore, she was not the spouse of an alien eligible to be a TPS registrant during the initial registration period, as required by 8 C.F.R. § 244.2(f)(2)(iv). The applicant has not submitted evidence sufficient to establish that she has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

Furthermore, the documents in the record fail to establish the applicant's qualifying residence and continuous physical presence. The record reflects that the applicant entered the United States on February 14, 2001-one day after the cut-off date for the continuous residence and physical presence requirements for Salvadoran TPS. The applicant indicated on her application that she last entered the United States, on February 14, 2001, as a nonimmigrant visitor for pleasure (B-2), and submits copies of her passport and Form I-94, Arrival/Departure Record, as corroboration. The submitted documents only show physical presence since on or after February 14, 2001. The applicant is therefore unable to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Furthermore, because the applicant entered the United States after the requisite time periods for continuous residence and continuous physical presence, she is statutorily ineligible for the benefit sought. 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.