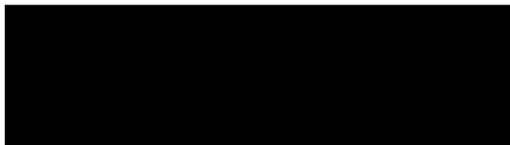


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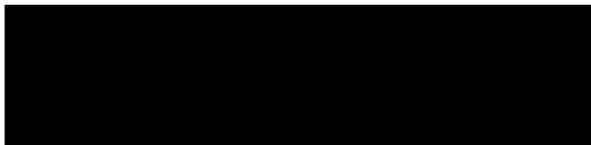
[EAC 07 073 70401]

INRE: 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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a 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 director denied the application because the applicant failed to establish she was eligible for late registration.

On appeal, counsel states that the applicant's initial TPS application "should have been processed as timely filed and all other subsequent re-inscriptions should be processed."

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.

Persons applying for TPS offered to El 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. The record reveals that the applicant filed her initial application with Citizenship and Immigration Services (CIS) on September 25, 2002 [SRC 0302454443].

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.

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 record reflects that, on July 16, 2002, the applicant mailed her Form 1-821, Application for Temporary Protected Status, to the Texas Service Center, which returned it because the applicant failed to sign the application. The Texas Service Center received the properly signed application, mailed on September 23, 2002, on September 25, 2002.

On appeal, counsel asserts that CIS "recognizes that the initial 1-821 was post marked on July 16, 2002," and that

[The] initial 1-821 was received by CIS on 09-25-2002. The applicant should not be deemed as having filed the initial application for TPS late because it was mailed more than 6 weeks before the deadline and either the Postal Service or [sic] the CIS mailroom made a mistake by not processing as received until 09-25-2002.

The record reflects that the Director, Texas Service Center, noting the original postmark of July 16, 2002, considered the applicant's initial Form 1-821 as timely filed. However, this was an error by the director, as she did not consider the initial rejection of the application because the applicant did not sign it. The regulation at 8 C.F.R. § 103.2(a)(2) provides, in part, that:

An applicant or petitioner must sign his or her application or petition . . . By signing the application or petition, the applicant or petitioner certifies under penalty of perjury that the application or petition, and all evidence submitted thereafter, is true and correct.

Additionally, by regulation, the filing date of an appeal, application, or petition is determined by the date of "actual receipt," not the date of mailing. "An application or petition which is not properly signed . . . shall be rejected as improperly filed. Rejected applications . . . will not retain a filing date." 8 C.F.R. § 103.2(a)(7)(i).

Therefore, the applicant filed her initial Fonn 1-821 application outside of the initial registration. Nonetheless, the director concluded that the application was submitted within the requisite period and attempted to adjudicate the application on its merits. On January 25, 2003, the director requested additional documentation from the applicant in support of her TPS application. However, the applicant did not respond. The director denied the application for abandonment on July 2, 2003, noting that the applicant failed to appear for fingerprinting and failed to submit the requested evidence. The record was reopened on service motion on January 26, 2004, and the applicant was instructed to submit evidence that she resided in the United States prior to February 13, 2001. On May 3, 2004, the applicant was again requested to submit evidence to establish continuous her residency in the United States since February 13, 2001. The applicant did not respond to the request and the service center denied the motion on July 15, 2004. A May 13, 2005, Fonn 1-821 request for re-registration [WAC 05 225 73448] was denied on September 20, 2005.

The applicant filed the Fonn 1-821 that is the subject of this appeal on December 11, 2006. The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on April 30, 2007. The applicant has not submitted evidence on appeal to overcome the director's determination. Counsel's argument that the initial application was timely filed is without merit, since the application was received after the close of the filing period as discussed above. Moreover, the director adjudicated the case and denied the application on its merits on July 15, 2004.

Accordingly, any Fonn 1-821 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, 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.

The applicant filed this subsequent Fonn 1-821 on December 11, 2006. Since the initial application was denied on July 15, 2004, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

The applicant has submitted evidence in an attempt to establish her qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Fonn 1-821 application within the initial registration period. The applicant has not submitted any evidence to

establish that she has met any of the criteria for late registration described in 8 c.F.R. § 244.2(e)(2). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish her qualifying continuous residence or continuous physical presence during the requisite time periods. Therefore, the application also must be denied for these reasons.

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.

The record reflects that at removal proceedings on May 13, 2006, an immigration judge ordered the applicant, in absentia, to be removed to El Salvador. The record also contains an outstanding order of removal dated July 17, 2006.

ORDER: The appeal is dismissed.