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U.S. Citizenship
and Immigration
Services

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FILE:

[EAC 06 305 82578]

OFFICE: Vermont Service Center DATE: NOV 21 2008

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

John F. Grissom, Acting 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 is stated 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 record reveals that the applicant filed a TPS application during the initial registration period on July 2, 2001, under receipt number SRC 01 232 66718. The Director, Texas Service Center, denied that application due to abandonment on March 6, 2003, because the applicant failed to respond to a request for evidence to establish her nationality and identity, and her qualifying continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. On March 8, 2004, the applicant submitted an appeal from the director's decision. On September 19, 2003, the applicant filed a late motion to reopen the director's decision. That motion was denied on December 22, 2003.

The applicant filed a subsequent TPS application on March 1, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 152 77627, and indicated that she was re-registering for TPS or renewing her temporary treatment benefits. The Director, California Service Center, denied that application on August 16, 2005, because the applicant's prior TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS or renewal. On September 8, 2005, the applicant submitted an appeal from the director's decision. The appeal was dismissed by the AAO on May 24, 2006.

The applicant filed the current TPS application on July 24, 2006, under CIS receipt number EAC 06 305 82578, and indicated it was a new application. The VSC director denied that application on December 12, 2006, because the applicant failed to establish that she was eligible for late registration for TPS. The applicant has now submitted an appeal from the director's decision.

On appeal, counsel states that the applicant was not at fault for failing to respond to a request for evidence, but rather, that was the fault of her prior attorney. He further asserts that the applicant has now submitted substantial evidence to clearly prove that she is eligible for TPS.

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 July 24, 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 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).

On September 20, 2006, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). On December 12, 2006, the VSC director denied that application because the applicant failed to respond to a request for evidence, and therefore, failed to establish she was eligible for late registration.

On appeal, counsel states that the applicant's initial TPS application filed on July 2, 2001, was granted and that the applicant has been filing her taxes continuously since 1995. The electronic record, however, indicates that the applicant's initial TPS application was never granted, in fact, that application was denied on March 6, 2003.

The applicant submitted the following evidence:

1. Copies of her Employment Authorization Document (EAD) cards;
2. A copy of a bank statement from Community Bank of Florida for a period from September 29, 2007 to December 31, 2007;
3. An employment letter from [REDACTED] a manager of El Toro Taco Restaurant;
4. A copy of a money transfer receipt from Gigante Express dated May 3, 2001;
5. Copies of Utility Service Bills dated March 20, 2001 and April 20, 2001;
6. A letter dated March 17, 2008, from [REDACTED] Pastor of Sacred Heart Catholic Church, attesting that the applicant has been a registered parishioner since September 9, 2002;
7. Copies of Form 1040A, U.S. Individual Income Tax Return, for the years 1995 to 2002, and for the years 2004 to 2007;
8. Copies of the applicant's children's birth certificates; and,
9. Copies of the applicant's children's school reports from West Homestead Elementary School.

The applicant has submitted sufficient evidence establishing her qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Form I-821, Application for Temporary Protected Status, 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(f)(2). Consequently, the director's decision to deny the application for TPS will be affirmed.

Furthermore, the record does not contain copies of the applicant's birth certificate or passport. She has, thereby, failed to establish her nationality or identity. In addition, it is also noted that the applicant was ordered removed to El Salvador by an immigration judge on November 18, 1998. That order remains outstanding.

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.