



U.S. Citizenship
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Services

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FILE:

[EAC 08 044 74313]

Office: VERMONT SERVICE CENTER

Date: APR 01 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

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 claims 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 director determined that the applicant failed to establish that she was eligible for filing her TPS application after the initial registration period from March 9, 2001 through September 9, 2002. The director, therefore, denied the application.

On appeal, counsel for the applicant claims that the applicant submitted sufficient evidence to prove she qualifies 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 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 term *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 term *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 El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 10, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on November 13, 2007. The record reveals that the applicant filed a TPS application during the initial registration period on July 23, 2001, under receipt number LIN 01 231 51159. The Director, Nebraska Service Center, denied that application on November 29, 2001, because the applicant failed to establish her nationality and identity. There is nothing in the record to indicate that the applicant appealed the director's decision. The applicant filed a subsequent TPS application on October 4, 2002, under receipt number LIN 03 026 50056. The Director, Nebraska Service Center, denied that application on June 3, 2003, because the applicant failed to establish her continuous residence and continuous physical presence in the United States during the qualifying period and her eligibility to file for late initial registration. There is nothing in the record to indicate that the applicant appealed the director's decision. The applicant filed a subsequent TPS re-registration application on April 26, 2005. The Director, California Service Center, denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. On July 27, 2005, the

applicant filed an appeal of the director's decision. On December 28, 2006, the AAO dismissed the appeal.

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 United States Citizenship and Immigration Services (USCIS). 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 of proceeding confirms that the applicant filed this application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

The director determined that on April 4, 2003, the applicant was informed of the reasons for the denial of her initial TPS application, and that the applicant had not provided any new and compelling evidence to overcome the grounds for denying the initial TPS application. Therefore, the director denied the current application.

On appeal, counsel states that the decision was based on an incorrect interpretation of law and fact. According to counsel, the applicant submitted sufficient evidence to prove she qualifies for TPS based on her duration of residence in the United States. Counsel also contends that the applicant is eligible for late initial registration because she filed a TPS application during the initial registration period and therefore had an application for relief pending. In addition, counsel states that he would submit a brief and/or evidence within 30 days. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete.

Counsel contends that the applicant qualifies for TPS because she submitted sufficient evidence to prove she qualifies for TPS based on her duration of residence in the United States. However, the applicant's initial TPS application was denied because the applicant failed to establish her nationality and identity. The record does not contain a national identity document from the applicant's country of origin. In addition, counsel claims that the applicant's initial TPS application was an application for relief from removal. However, an application for TPS is not an application for adjustment of status or relief from removal and having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision that the applicant was not eligible for late registration will be affirmed.

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 temporary protected status will be affirmed.

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.

Beyond the director's decision, it is noted that a Federal Bureau of Investigation (FBI) Fingerprint Report indicates that the applicant was arrested on August 14, 2004 by the Minneapolis, Minnesota Police Department for "TB Assault 5th Degree/Domestic." The final disposition for this arrest is not in the record. USCIS must address this arrest in any future proceedings.

ORDER: The appeal is dismissed.