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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 09 170 70753]

OFFICE: VERMONT SERVICE CENTER

DATE: APR 01 2010

IN RE: Applicant: [REDACTED]

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 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 or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
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, the applicant claims that she is eligible for late registration as she: 1) had a pending asylum application from June 2000 through June 2001; and 2) was in a valid non-immigrant status from June 14, 2001 through September 18, 2001. The applicant asserts that she has applied for and received employment authorization from 1998 until July 11, 2006.

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 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. 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 record reveals that the applicant filed her initial TPS application on March 4, 2009.

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 U.S. 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).

USCIS records reflect that the applicant's mother filed a Form I-589, Application for Asylum and Withholding of Removal. The applicant was a derivative of her mother's asylum application. A Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)) was subsequently filed by the applicant's mother. The asylum application was withdrawn by the applicant's mother on August 8, 2002, when her NACARA application was approved and she was granted lawful permanent residence.

There is no evidence in the record that the applicant filed Form I-881 or a Form I-589 subsequent to the withdrawal of her mother's Form I-589 in which she was a dependent.

On June 19, 2009, 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). The applicant was also requested to submit evidence establishing her continuous physical presence in the United States from February 13, 2001, to the date of filing. The applicant, in response, provided evidence to establish her qualifying residence and physical presence in the United States. The applicant asserted, in pertinent part:

When my mother became a U.S. Permanent Resident under the NACARA program, she was told by the Immigration Officer that I was going to loose [sic] my status as well as all of my brothers. Since we had the work permit, my mother did not think so much about it and she accepted. Some time passed, I applied for my permanent residence as a beneficiary of my mother's NACARA. On 08/08/02, the Immigration Service gave me the temporary residence valid until 10/03/03. Then I got denied because I got married. In the years 2006, Immigration stopped approving my work permits.

The applicant provided a photocopy of a temporary Form I-551 issued on October 4, 2002, with an expiration date of October 3, 2003.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on August 19, 2009.

As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following the withdrawal of her mother's asylum application to file an application for late registration to meet the requirement described in 8 C.F.R. § 244.2(f)(2)(ii). However, the TPS application was not filed until March 4, 2009. Although the applicant was not eligible, she was erroneously advised that she had permanent resident status and was given such status until October 3, 2003.¹ The applicant had a 60-day period from this date to file a TPS application for late registration. As noted above, the TPS application was not filed until March 4, 2009. Therefore, the applicant has failed to establish that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(ii).

It is noted that despite the withdrawal of her mother's asylum application, the record indicates that Employment Authorization Cards were continuously issued to the applicant. It would be absurd to suggest that USCIS must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). USCIS is not required to approve applications or petitions where eligibility has not been demonstrated. *See Matter of M-*, 4 I&N Dec. 532 (A.G. 1952; BIA 1952).

The regulations at 8 C.F.R. § 244.2(f)(2) allow children of aliens who are TPS-eligible to file applications after the initial registration period had closed. However, in the instant case, the

¹ The applicant's mother was granted adjustment of status to lawful permanent resident under the classification code of Z15; this classification does not allow for derivative beneficiaries.

applicant's mother was not a TPS registrant and, therefore, the applicant would not have met the criteria for late registration 8 C.F.R. § 244.2(f)(2)(iv).

The applicant has submitted evidence 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 Form I-821, Application for Temporary Protected Status, within the 60-day period immediately following the withdrawal of her mother's asylum application or the expiration of her temporary Form I-551. 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.

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.