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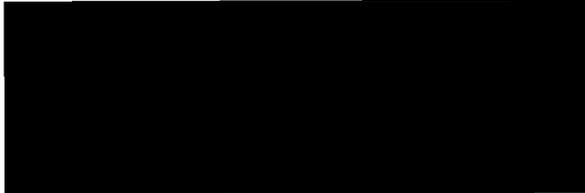
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED]
[EAC 09 092 86299]

OFFICE: VERMONT SERVICE CENTER

DATE: APR 26 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:



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).

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 (AAO) 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 asserts that the applicant's reason in failing to file a TPS application within the 60-day period following the expiration of the qualifying condition is due to a lack of notice.

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 December 16, 2008. 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. 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 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).

On May 8, 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 of her identity. The applicant, in response, provided evidence of her nationality and identity. The applicant also submitted a copy of her father's employment authorization card issued under category 08 (asylum).

The director, however, determined that the applicant had not established eligibility for late initial registration because her asylum application had been withdrawn on August 8, 2008, and the applicant did not file an application for TPS within 60 days of the date of that withdrawal. Accordingly, the director denied the application on June 25, 2009.

On appeal, counsel asserts that the applicant's failure to file her TPS application within 60 days following the withdrawal of her father's asylum case is excusable because the applicant did not have proper notice of the change in circumstances.

Counsel provides an affidavit from the applicant, who asserts, in pertinent part:

That I was not made aware of the closing of my father's asylum case until I actually saw the notification in November of 2008. I have no idea on which date the notification was received as someone other than myself subsequently misplaced it and I actually never saw the original and have not see it since. I did however, find an empty envelope from Immigration, but I have no idea what it contained.

USCIS records reflect that the applicant's father filed a Form I-589, Application for Asylum and Withholding of Removal, on January 29, 1996. The applicant was a derivative of her father'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 filed by the applicant's father on January 9, 2008. The asylum application was withdrawn by the applicant's father on August 8, 2008, when his NACARA application was approved and he was granted lawful permanent residence.

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

On his Form I-881, the applicant's father was requested to list the current addresses of all his children. The father indicated that the applicant's current address was the same as his address, [REDACTED]. Accordingly, the notice was properly served on the applicant in compliance with 8 C.F.R. § 103.5a(a).

As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following the withdrawal of her father'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 December 16, 2008. Accordingly, the applicant has failed to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). The applicant's statements made on appeal have been considered. The AAO, however, is bound by the clear language of the regulations and lacks the authority to change the regulations. Further, there is no provision to waive the registration requirement, other than those described in 8 C.F.R. § 244.2(f)(2), based on the applicant's assertion that she had no knowledge that her father withdrew his asylum application. Consequently, the director's decision to deny the TPS application 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.