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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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Services

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[REDACTED]

FILE: [REDACTED]

[EAC 09 108 89844]

Office: Vermont Service Center

Date: **MAY 06 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

IN BEHALF OF APPLICANT:

[REDACTED]

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.

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 (WAC0302851775) on September 10, 2002. On October 9, 2003, the Director, California Service Center, denied the application as the applicant failed to establish: 1) her identity; 2) her nationality; 3) continuous residence in the United States since February 13, 2001; and 4) continuous physical presence in the United States since March 9, 2001. The appeal from the denial of this application was approved on December 2, 2003. On December 19, 2003, a Notice of Intent to Deny was issued requesting the applicant to submit the court disposition for her arrest on September 16, 2001, for inflicting corporal injury upon a spouse/cohabitant. The applicant, however, failed to respond and on February 27, 2004, the director denied the application. No appeal was filed from this decision.

The applicant filed another application (WAC05116571808) on March 14, 2005, and indicated that it was her first application to register for TPS. The Director, California Service Center, accepted this application as a re-registration application. On July 27, 2005, the Director, California Service Center, denied the application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The applicant filed the current TPS application on December 30, 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.

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 April 17, 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). Counsel, in response, asserted that the applicant qualified for TPS under the postmark rule. Counsel asserted that the applicant had been residing in the United States since 1996, and that consideration should be given to the initial registration.

The director determined that counsel's response did not overcome the grounds for denial. The director noted that the applicant's initial TPS application, which was received on time, had been denied on February 27, 2004, for failure to submit the requested court document. The director concluded that the submission of an initial application does not qualify under the provisions of late registration. Accordingly, on June 3, 2009, the director denied the application.

On appeal, counsel asserts, "applicant provided proof of her criminal record in previous submissions and additionally, her arrest was dismissed and could not form a basis for her denial of TPS benefits"

Counsel's assertion, however, is not supported by the record. A thorough review of the record does not reflect that a response was received prior to the issuance of the director's decision of February 27, 2004. As noted above, no appeal was filed from this decision.

The record does reflect that along with her TPS application filed on March 14, 2005, the applicant submitted court documents dated January 18 and 21, 2005, from the Los Angeles County Superior Court of California. The documents indicated that indexes had been examined by name only and there were no records. These documents, however, do not support counsel's assertion that the offense was dismissed. A statement made by counsel is not affirmative evidence and fails to meet the applicant's burden.

The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel seemingly implies that submitting a TPS application during the initial registration renders the applicant eligible for late initial registration. The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens whose initial applications had been denied to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. Having an application for TPS during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2).

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.