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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



M1

DATE: JUN 08 2011

Office: VERMONT SERVICE CENTER

FILE:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for Temporary Protected Status was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that she is a national of a foreign state designated by the Secretary and eligible for the granting of Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On appeal, counsel asserts that the applicant is married to a citizen of El Salvador. Counsel asserts that he is relying on an unpublished decision from the Board of Immigration Appeals (BIA) “that had to decide whether a Mexican national whose spouse was a Honduran national can qualify for derivative TPS through her spouse.” Counsel argues that the regulations do not specifically require that the derivative spouse be a native or citizen of a foreign country designated under 244(b) of the Act.

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 Secretary 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.

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 March 9, 2012, upon the applicant's re-registration during the requisite period.

The applicant, who is a native and citizen of Mexico, married an El Salvadoran national on July 21, 2001.

Citing *In re:* [REDACTED] counsel, on appeal, asserts that the applicant is eligible for TPS because her spouse is a national of El Salvador and has been granted TPS. He states that in [REDACTED] the immigration judge granted the respondent TPS as a derivative applicant who was not a national of a designated foreign state [*Reyes* was a Mexican national and spouse of a Honduran national]. The BIA held that the spouse of a TPS eligible registrant is also eligible to obtain TPS status even if her nationality is different from that of her spouse.

As indicated above, however, under 8 C.F.R. § 244.2(a) the first qualification for TPS is that the applicant must be a national of a designated foreign state. Contrary to counsel's assertions, while USCIS regulations may allow spouses of TPS applicants to file for TPS after the initial registration period has closed; these regulations do not relax the requirements for eligibility for TPS. The applicant is still required to meet the nationality requirements in order to be granted TPS as the spouse of a TPS recipient. As a national of Mexico, the applicant cannot meet these requirements. There is no indication that *Reyes* has been declared a precedent decision and, therefore, is not binding on the AAO. 8 C.F.R. § 1003.1(g). Moreover, it is unclear why the Board arrived at this decision when the statute clearly states that aliens must be "nationals of designated foreign states." Section 244(c) of the Act. There is currently no provision granting TPS to nationals of Mexico. 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.