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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 06 356 80902]

Office: VERMONT SERVICE CENTER

Date: DEC 07 2007

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), denied the application. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who seeks 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 and because she failed to establish her qualifying continuous residence and continuous physical presence in the United States.

On appeal, counsel for the applicant asserts that the applicant has established her qualifying continuous residence and continuous physical presence. Counsel further asserts that, while the applicant is not eligible for late registration as the child of a TPS registrant, she qualifies for a waiver of inadmissibility and denial of her application would result in extreme hardship to her lawful permanent resident father. Counsel submits additional documentation in support of the applicant's claim.

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 phrase 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 phrase 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 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 valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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 Citizenship and Immigration Services (CIS). 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 reflects that the applicant filed her initial TPS application on March 26, 2002 - during the initial registration period for Salvadorans. In support of her application, the applicant submitted photocopies of her birth certificate, the identification page of her Salvadoran passport, her North Carolina state identification card, issued on June 7, 2000, and her daughter's North Carolina birth certificate, showing her daughter was born on December 12, 2001.

On May 19, 2003, the director requested that the applicant submit additional evidence establishing her qualifying continuous residence. The applicant did not respond to the director's request. On August 11, 2003, the director denied the application, determining that the applicant had failed to respond to his request and had failed to overcome the intended grounds for denial.

The applicant submitted subsequent re-registration applications that have been denied because her initial TPS application was not approved.

On September 21, 2006, the applicant submitted the current application. The director accepted it under the late filing provisions of 8 C.F.R. § 244.2(f). On March 26, 2007, the director denied the application, stating that the applicant was not eligible for late registration through her mother because she was not a child, under 21, during the initial registration period.

On appeal, counsel asserts that the applicant qualifies for a waiver of inadmissibility and denial of her application would result in extreme hardship to her lawful permanent resident father.

The evidence submitted did not overcome the applicant's failure to file her TPS application within the initial registration period. The applicant did not file her current TPS application, until August 28, 2006. While the AAO is sympathetic to the applicant's situation, none of the documentation submitted overcomes the applicant's failure to file her TPS application within the required registration period. There is no extreme hardship exception for late filing under the Act or the regulations. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). The director's decision to deny the application will be affirmed.

Furthermore, the evidence submitted by the applicant fails to establish her qualifying residence and continuous physical presence. There is a significant time gap between the issuance of the applicant's North Carolina identification card on June 6, 2000, and the birth of the applicant's child on December 12, 2001, which the applicant has not accounted for through documentation. The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001. She has therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status has the burden of proving that he or she meets the requirements cited 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.