

IDENTITY INFORMATION RELEASED TO
PREVENT SECURITY INFORMATION
INVASION OF PERSONAL PRIVACY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1



FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: NOV 28 2005
[EAC 04 019 51141]

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

Robert P. Wiemann, Director
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 case will be remanded to the director for further action.

The applicant is a native and 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 originally denied the application on April 22, 2003, because the applicant had failed to overcome the grounds of the director's denial. The applicant appealed the director's decision on May 26, 2004. Because the appeal was not filed within the prescribed period of 33 days, the director rejected the appeal and accepted it as a Motion to Reopen. The director noted that the evidence submitted with the motion met the requirements for continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. However, the director determined that the applicant had failed to establish that she was eligible for late registration, affirmed her previous decision, and again denied the application on July 29, 2004.

On appeal, the applicant asserts that she did meet the continuous residence and continuous physical presence requirements, and that she is providing additional evidence.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial application on September 11, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2).

A review of the record of proceeding indicates that on February 20, 2000, the applicant filed Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)). On October 20, 2000, the Asylum Office Director in New York approved the application and granted the applicant adjustment of status to lawful permanent resident (LPR).

It is noted that in a letter dated May 14, 2003, the applicant furnished a change of her address and advised the Vermont Service Center that she has not received her Permanent Resident Card, Form I-551. There is no record that a response to the applicant's letter was made. It is also noted that the record contains a copy of a letter from the New York Asylum Office dated November 3, 2000, advising the applicant that documentation that was to be submitted to support her application was missing, and to appear at that office on November 17, 2000, with all requested documents. She was advised that, "if this evidence is not provided then this Service has no choice but to revoke your residence that was granted to you on October 20, 2000."

There is no evidence in the record to show that the applicant appeared at the asylum office on the scheduled date. Nor is there any evidence to show that the applicant's lawful permanent residence had been revoked.

If the applicant is, in fact, a lawful permanent resident of the United States, then the applicant's appeal on the denial of the TPS application should be rejected as moot, because as a LPR, the applicant would not need TPS and employment authorization. However, the applicant may be eligible for late registration, pursuant to 8 C.F.R. § 244.2(f)(2), if she is in fact not eligible for LPR and the revocation of her status had been held in abeyance.

Nevertheless, the record is not clear as to the applicant's present status. Therefore, the case will be remanded for the determination of the applicant's present status.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded for appropriate action consistent with the above discussion.