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U.S. Citizenship  
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Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: NOV 30 2005

[EAC 04 096 50790]

IN RE:

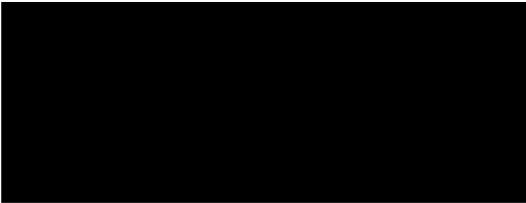
Applicant:



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:

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.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

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 denied the application because the applicant had failed to establish that she was eligible for late registration.

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 February 13, 2004.

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) (listed above).

In a notice of intent to deny dated February 25, 2004, 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 establishing her 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.

The director noted that the applicant responded to her request by providing evidence to establish continuous residence and continuous physical presence during the requisite period; however, the applicant failed to establish that she was eligible for late registration and denied the application on July 14, 2004.

On appeal, counsel asserts that the applicant never received the notice of action requesting additional evidence; therefore, CIS should have accepted the documents she sent on April 2, 2004.

It is noted that counsel indicated in a letter accompanying the initial TPS application that the applicant "is eligible for late initial registration because she is in Political Asylum Proceedings."

The record of proceeding contains Form I-589, Request for Asylum in the United States, filed by the applicant's spouse [REDACTED] file number [REDACTED] on March 14, 1994, listing the applicant as his dependent. Also contained in the record is a Memorandum to File dated July 8, 1996, indicating that the case was closed because the applicant failed to appear for a scheduled interview, and the unexcused failure of the applicant to appear for a scheduled interview may be presumed an abandonment of the application pursuant to 8 C.F.R. § 208.10.

It is noted, however, that the applicant was issued an Employment Authorization Card based on a pending asylum application (C08) valid from March 11, 2002 to March 10, 2003. Additionally, CIS database shows that the

current status of the asylum application of both the applicant and her spouse is "awaiting interview-priority," and that fingerprint requests were sent on June 25, 2005.

While a pending asylum application during the initial registration period would render the applicant eligible for late initial registration described in 8 C.F.R. § 244.2(f)(2)(ii), as noted above, the asylum application was administratively closed on July 8, 1996, and the record does not contain evidence that the case was reopened.

Therefore, the case will be remanded so that the director could review the records of the applicant and of her spouse. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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.