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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: DEC 13 2007
[SRC 01 237 56012]
[WAC 05 118 75958]

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 California Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO), and the application will be approved. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the AAO on appeal. The appeal will be sustained and the application will be approved.

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 record of proceedings shows that the applicant filed an initial application for TPS on July 11, 2001, under CIS receipt number SRC 01 237 56012. The Director, Texas Service Center, denied the application on May 22, 2004, due to abandonment, because the applicant had failed to appear for fingerprinting as scheduled.

However, the record of proceedings shows that the director's decision was in error. The record reveals that the applicant's initial TPS application was not approved; however, she applied for re-registration on October 7, 2002, August 1, 2003, and January 26, 2005. She was granted employment authorization for the 2001-2002, 2003-2004, and 2004-2005 periods. On September 13, 2001, the applicant was requested to appear for fingerprinting on October 25, 2001. On September 5, 2003, the applicant was requested to appear for fingerprinting on October 3, 2003. The record shows that the September 2003 notice was sent to the correct address, but returned to Citizenship and Immigration Services on September 22, 2003, as undeliverable. The applicant was subsequently fingerprinted on October 25, 2001, March 27, 2005, and March 30, 2006, and no criminal record was found which would preclude her from receiving TPS.

Another issue initially addressed by the Director is whether the applicant has submitted sufficient evidence to establish her continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States.

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.

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 El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. An extension of the program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. 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.

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 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 Director, California Service Center, sent the applicant a Notice of Intent to Deny on January 2, 2003. The applicant was requested to submit additional evidence establishing her qualifying residence and physical presence in the United States. The applicant timely responded by providing copies of her El Salvadoran birth certificate along with an English translation, El Salvadoran passport, Georgia Driver's License, health insurance card, Form W-2, Wage and Tax Statements, for the 2000 and 2001 tax years, and various money gram receipts from 1997 and 1998.

On appeal, the applicant asserts her eligibility for TPS and submits copies of her pay statements from Publix Super Market for the 2001, 2002, 2003, 2004, and 2005 work year.

The applicant has submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods as described in 8 C.F.R. § 244.2(b) and (c).

Since the applicant has overcome the grounds for the denial of her initial application for TPS, that decision has been withdrawn. The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any other grounds that would bar the applicant from receiving TPS. Therefore, the initial application will be approved.

The California Service Center director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

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 met this burden.

ORDER: The initial application is reopened and the Texas Service Center director's denial is withdrawn. The initial application and the re-registration application are both approved.