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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
[WAC 03 262 54036]

OFFICE: California Service Center

DATE: DEC 18 2007

IN RE: Applicant:

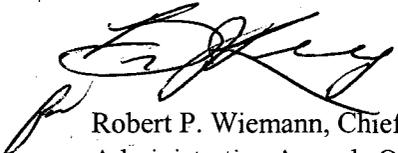
[REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC). It is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn. The appeal will be sustained.

The applicant is a citizen of El Salvador who is applying for 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 on the ground that the applicant failed to register in a timely manner or provide evidence that she was eligible for late registration.

On appeal the applicant asserts that she qualifies for late TPS registration and submits additional documentation.

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 designated by the Attorney General 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.

(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.

El Salvadoran nationals applying for TPS must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she satisfied at least one of the criteria enumerated in 8 C.F.R. § 244.2(f)(2) above.

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 CIS. *See* 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. *See* 8 C.F.R. § 244.9(b).

The applicant, who states that she entered the United States without inspection on December 1, 1992, filed her initial Form I-821, Application for Temporary Protected Status, on September 9, 2003 – exactly one year after the close of the initial registration period for El Salvador nationals. On March 1, 2004, the director denied the application on the ground that the applicant did not file during the initial registration period and failed to establish that she was eligible for late TPS registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2).

The applicant filed a timely appeal, asserting that she qualifies for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii) on the basis of a pending application for asylum as the spouse of her husband, J. [REDACTED]. The applicant submits a photocopy of the Form I-589, Application for Asylum and Withholding of Deportation, filed by Mr. [REDACTED] under the American Baptist Church (ABC) v. Thornburgh Settlement Agreement in August 1995; and an Employment Authorization Card issued to Mr. [REDACTED] S. [REDACTED] valid from November 17, 1999, to November 16, 2000, indicating that it was based on a pending asylum application. The record also includes an earlier submitted photocopy of a marriage license confirming that the applicant married Mr. [REDACTED] in Los Angeles, California, on May 10, 1998; as well as a copy of Mr. [REDACTED]'s Form I-589 from 1995 with the applicant's photograph thereon and a receipt stamp of the California Service Center dated May 18, 1998. CIS records indicate that the applicant was issued her first Employment Authorization Card on July 7, 1998, on the basis of a pending asylum application.

In view of the foregoing record, the applicant has established that she is eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii) based on her pending asylum application at the time of the initial registration period.

Thus, the only ground for denial cited in the director's decision has been overcome. The record of proceedings establishes that the applicant meets the continuous residence and continuous physical presence requirements for El Salvadoran nationals seeking TPS in the United States, and does not reveal any grounds that would bar the applicant from receiving TPS. Accordingly, the director's denial of the initial TPS application will be withdrawn. The appeal will be sustained, and the application 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 that burden.

ORDER: The director's denial decision of March 1, 2004, is withdrawn. The appeal is sustained.