

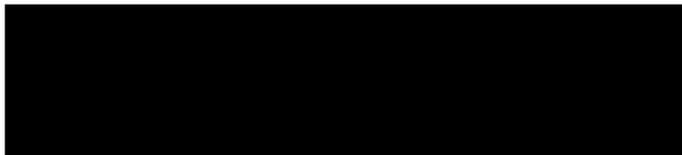
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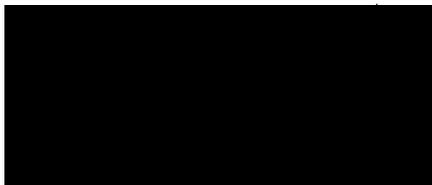
OFFICE: California Service Center

DATE: DEC 18 2007

IN RE: Applicant: [REDACTED]

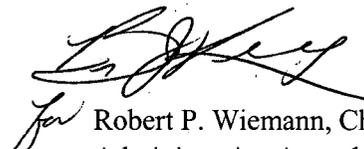
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a 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 on the ground that the applicant failed to establish she was eligible for late TPS registration.

On appeal, the applicant claims that she is eligible for late registration because she has had a pending asylum application since the 1990s and that she meets the other requirements for TPS.

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 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002.

The record reveals that the applicant filed her initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on November 23, 2005 – more than three years after the close of the initial registration period. To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) above. The applicant asserts that she meets the condition described at 8 C.F.R. § 244.2(f)(2)(ii) because she has had a pending asylum application since the 1990s.

On April 13, 2006, the director denied the application on the ground that it was not filed during the initial registration period and did not qualify for late registration under 8 C.F.R. § 244.2(f)(2). The director noted the applicant's claim that she had a pending asylum application, but referred to CIS records indicating that the case had been administratively closed/withdrawn on May 7, 1993.

On appeal the applicant states that she never requested that her asylum application be administratively closed and claims that she still has a pending asylum application. She cites the fact she has continued to renew her EAD (Employment Authorization Document) based on her pending asylum application, and submits photocopies of a series of Employment Authorization Cards (EACs) issued to her between 1999 and 2006.

The record indicates that the applicant and her then husband, [REDACTED], entered the United States without inspection in September and October 1992, respectively. Each filed a Form I-589, Request for Asylum in the United States – the applicant's husband on December 9, 1992, and the applicant on January 27, 1993. According to CIS records, the applicant was interviewed on April 27, 1993, after which her separate asylum request was administratively closed / withdrawn on May 7, 1993. An immigration judge denied asylum to the applicant's husband in a decision issued on December 2, 1993.¹ Thereafter the applicant submitted a new Form I-589 to the Southern Service Center in Irving, Texas, which bears a receipt stamp dated December 28, 1994. No decision has been issued on that asylum request.

¹ Following an appeal process a voluntary departure order (VDO) was issued in the case of the applicant's husband on November 19, 1998, granting him voluntary departure in lieu of deportation. The VDO was apparently violated, and the applicant's husband was subsequently deported from the United States to El Salvador.

Meanwhile, the record shows that the applicant filed her initial Form I-765, Application for Employment Authorization, along with her asylum request on January 27 1993. It was approved on the date of her asylum interview, April 27, 1993, for a one-year period. When she filed her second asylum request in December 1994, the applicant also filed a new Form I-765. CIS records indicate that the new employment authorization application was approved for a one-year period on February 24, 1995, on the basis of the applicant's pending asylum application. The applicant continued to file for employment authorization in succeeding years, and CIS records confirm that she was granted serial extensions over the years 1999-2004, the last of which was valid until June 7, 2005, on the basis of a pending asylum request. Prior to the expiration of the last of these extensions the Texas Service Center, on May 28, 2005, denied another one-year extension application on the ground that the applicant did not have a pending asylum application, citing CIS records indicating that the applicant's asylum request had been administratively closed on May 7, 1993.² The Texas Service Center did not mention the applicant's second asylum application, filed in December 1994, on the basis of which the applicant's first one-year extension of employment authorization was approved in February 1995. That second asylum application is still pending.

Based on the foregoing record, the AAO agrees with the applicant that she is eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii) because her asylum request filed in December 1994 was still pending at the time her TPS application was filed in November 2005. Accordingly, the director's decision to deny the application on the ground of late filing will be withdrawn.

Based on the evidence of record – including photocopies of the applicant's Form W-2, Wage and Tax Statements, and federal income tax returns over the years 1999-2004, and a letter to the applicant from the Social Security Administration in November 2004 listing her annual earnings over the years 1995-2003 – the AAO determines that the applicant has established her continuous physical presence in the United States since March 9, 2001, and her continuous residence in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c).

Furthermore, the documentation of record, including a photocopy of the applicant's El Salvadoran passport, establishes her identity and El Salvadoran nationality, in accordance with the requirements of 8 C.F.R. § 244.2(a). The record does not reveal any grounds of ineligibility for TPS.

An alien applying for Temporary Protected Status 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 appeal is sustained.

² CIS records indicate that the applicant's last approval for employment authorization, on March 24, 2006, was based on the TPS application she filed in November 2005, which had not yet been adjudicated by the California Service Center.