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U.S. Citizenship  
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Services

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NOV 01 2007

FILE:

OFFICE: VERMONT SERVICE CENTER

DATE:

[EAC 06 325 74043]

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:

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.

for Robert P. Wiemann, Chief  
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 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 director denied the application after determining that the applicant had failed to respond to a request to submit evidence to establish that she had been continuously physically present in the United States from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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 parole; 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

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. 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 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 August 21, 2006.

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).

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, in his decision, noted that the TPS application was received after the initial registration period and was accepted under the late initial filing provisions of 8 C.F.R. § 244. Although the director cited the criteria for eligibility for late registration under 8 C.F.R. § 244.2(f)(2), he did not find the applicant ineligible for TPS based on late registration. Nor did he find that the applicant has met at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). A review of the record indicates that Form I-589, Request for Asylum in the United States, was filed on February 4, 1994. Based on the applicant's failure to appear for a scheduled interview on July 16, 2005, the asylum application was denied on August 2, 2005. However, on November 30, 2005, the asylum case was administratively reopened.

The record in this case indicates that during the initial registration period, the applicant had an application for asylum that was pending or subject to further review, and that the application remained pending when she filed her TPS application on August 21, 2006. Accordingly, the applicant has established that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(ii).

The director determined that the applicant had failed to respond to a request dated October 18, 2006, to submit evidence to establish continuous physical presence in the United States from March 9, 2001, to the date of filing the application. The director, therefore, denied the application on February 7, 2007.

On appeal, the applicant asserts that she did not receive the director's October 18, 2006 request for evidence, and that when she received the denial notice from the Vermont Service Center, she went to the Los Angeles district office and spoke to an immigration officer. She states that the officer, upon checking their computer, stated that there was no information specifying the reason or information that was lacking. The applicant further states that she has been residing in the United States since prior to 2001, and that she has had employment authorization cards (EAD) issued for political asylum since 1997 to the present.

The applicant submits several documents to establish residence and physical presence in the United States, including copies of Form 1040, Income Tax Return, for the tax years 2000 through 2005, inclusive; billing statements for 2000, 2001, 2002, and 2005; State of California identification cards issued in 2000 and 2003; and copies of EADs issued and valid for the periods from 1997 through 2007, inclusive. This evidence, in conjunction with other evidence contained in the record of proceeding, is sufficient to establish that the applicant has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c).

Accordingly, the director's decision will be withdrawn and the application will be approved.

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 this burden.

**ORDER:** The appeal is sustained and the application is approved.