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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

NOV 06 2007

FILE: [REDACTED]
[EAC 01 202 52643]

Office: Vermont Service Center

Date:

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:

[REDACTED]

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 (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office. The director's decision will be withdrawn, the appeal will be sustained, and the application will be approved.

The applicant is a native and citizen of El Salvador who filed an initial TPS application on May 24, 2001. On July 30, 2003, the director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the director determined that the applicant failed to establish that she was a national of El Salvador. The director also determined that the applicant had failed to establish she had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001, to the date of filing her application.

On August 10, 2004, over one year after the application was denied, the applicant filed an appeal which was treated as a motion to reopen by the VSC director. The VSC director reopened the case and denied the application again on September 14, 2004. The VSC director erred in his decision to reopen the application because the appeal was filed after the prescribed time frame and the applicant did not provide a reasonable explanation for the delay in filing an appeal over one year later.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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 entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence 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 by the Secretary of the Department of Homeland Security, 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).

On May 12, 2003, the applicant was requested to submit evidence to establish that she is a citizen or national of El Salvador. The applicant was also requested to submit evidence to establish her continuous residence in the United States as of February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. The applicant did not respond to the director's request; therefore, the director denied the application on July 30, 2003.

Counsel, on behalf of the applicant, filed an appeal that was received by the VSC on August 10, 2004. The appeal was untimely filed and therefore, was rejected by the director as improperly filed. The director treated the appeal as a motion to reopen, pursuant to 8 C.F.R. § 103.3(a)(1)(v)(B)(2), and rendered a decision on the merits of the case. After a complete review of the record of proceedings, including the motion, the director determined that the grounds for denial had not been overcome. The director, therefore, affirmed the previous decision and denied the application on September 14, 2004.

On October 14, 2004, counsel filed an appeal to the director's September 14, 2004 decision, which is now before the AAO.

On appeal, counsel submits the following documentation in support of the applicant's claim of eligibility for TPS:

1. A copy of the birth certificate of the applicant's daughter, [REDACTED] born on January 23, 1998, in Arlington County, Virginia;
2. Copies of the applicant's El Salvadoran passport issued on November 19, 1999, in Washington, D.C.;
3. A copy of the applicant's Virginia Identification Card issued on December 3, 1999;
4. A copy of a letter dated April 2, 2001, from the Internal Revenue Service (IRS) regarding the applicant's IRS Individual Taxpayer Identification Number;
5. Copies of the applicant's earnings statements from Bergman's Cleaning, Inc., dated December 10, 2001 and January 22, 2002;
6. A copy of a letter from the Virginia Hospital Center indicating that the applicant's daughter, [REDACTED] was born on January 30, 2002, in Arlington, Virginia;
7. A copy of the applicant's Virginia Department of Medical Assistance Services Eligibility Card reflecting her eligibility valid through the end of February 2002;
8. A copy of the birth certificate of the applicant's daughter, [REDACTED] born on January 30, 2002, in Arlington County, Virginia;
9. A copy of an employment letter dated October 15, 2003, from [REDACTED] who stated that the applicant has been employed with his company since June 2000;
10. A copy of a letter dated September 30, 2004, from the Arlington County Family Health Services indicating that the applicant has received health services from August 21, 2001 to December 13, 2001; and,
11. Copies of the applicant's IRS Forms W-2, Wage and Tax Statements, and U.S. Individual Income Tax Returns for the years 2000, 2001, and 2002.

The evidence submitted, as detailed above, reflects that the applicant has resided in the United States since 1998. In particular, she has been employed by [REDACTED] Inc., in Arlington, Virginia, since June of 2000, as detailed in Nos. 5, 9, and 11 above. In addition, her El Salvadoran passport was issued in the United States in 1999 along with her Virginia Personal Identification card. Also, she has had two daughters born in the United States in 1998 and 2002.

The applicant has submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence since March 9, 2001, to the date of filing her application. The applicant has also provided sufficient evidence to establish that she is a national and citizen of El Salvador. Therefore, 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.



Page 5

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