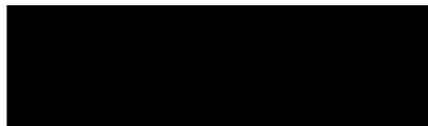


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U.S. Citizenship  
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Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: NOV 29 2007

[WAC 05 111 72605]

IN RE:

Applicant:



APPLICATION:

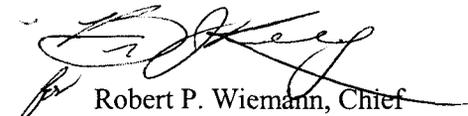
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, 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 because the applicant had failed to establish that she was eligible for late registration.

On appeal, counsel 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 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 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 January 19, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described 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 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).

In a Notice of Intent to Deny (NOID) dated February 5, 2006, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence to establish nationality and identity, and evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. In response, the applicant provided evidence relating to her residence and physical presence in the United States. She also submitted the following evidence to establish her eligibility for late registration:

1. A letter from the applicant dated February 13, 2006, stating that she applied for political asylum on June 9, 1993, and the application was pending until December 28, 2004, and that she filed her initial TPS application within 60 days of the termination of her asylum application.
2. A copy of a Notice of Decision dated December 28, 2004, from the California Service Center denying the applicant's Form I-765, Application for Employment Authorization, filed under receipt number WAC 05 036 52544, because she withdrew her asylum application.

3. A copy of the applicant's Form I-589, Request for Asylum in the United States, and a copy of Form I-797C, Notice of Action, acknowledging receipt of the Form I-589 filed by the applicant on August 13, 1996, under receipt number WAC 96 223 50019.

The director determined that in response to the NOID, the applicant had provided no evidence to indicate that she qualified for late initial registration, and denied the application on May 16, 2006.

On appeal, counsel asserts that the applicant withdrew her Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)), during her NACARA interview on September 4, 2001. Counsel states that the applicant was served with a notice to appear before an Immigration Judge in Los Angeles, California, for a removal hearing on November 9, 2001, but the applicant was told by the court clerk when she appeared for the scheduled hearing that her case had not been calendared and she would receive another notice in the mail. She submits a copy of a written note from the court clerk to support her claim. Counsel further states that if CIS looks closely at the facts, it will see that the applicant's NACARA application was dismissed on September 4, 2001, not her asylum application. She emphasized that while the applicant agreed to withdraw her NACARA application, her underlying asylum application was not dismissed nor withdrawn by the applicant. She submits copies of the applicant's Employment Authorization Cards valid from February 19, 2001 through February 11, 2005, issued to the applicant based on a pending asylum application. Counsel states that the applicant qualifies for late initial registration because her asylum application is still pending before CIS.

The record indicates that on June 11, 1993, the applicant was added as a dependent child on the asylum application filed by her mother, [REDACTED] registration number [REDACTED]. CIS database indicates that the applicant was added as a class member to the *American Baptist Church v. Thornburg* (ABC) Settlement Agreement on June 9, 1993. She was also determined to be eligible to apply for suspension of deportation or cancellation of removal under NACARA. On August 2, 1999, the applicant filed a Form I-881. The applicant's mother was subsequently granted NACARA on July 17, 2001, and her status was adjusted to that of a lawful permanent resident.

On September 4, 2001, the applicant appeared for a scheduled interview at the Anaheim, California, Asylum Office regarding her Form I-881 NACARA application. The record contains the "Request to Withdraw NACARA Application" and the "Record of Applicant's Oath During an Interview" dated September 4, 2001. It is noted that on the oath, or Declaration of Applicant, a line was drawn through the word "asylum" and was replaced with the word "NACARA" in three different places where the word asylum appeared, and was signed by the applicant and the interviewing Asylum Officer. Also on September 4, 2001, the applicant was issued a letter notifying the applicant that her NACARA application had been dismissed based on her request to withdraw her application. The record, in this case, indicates that the applicant withdrew her NACARA application and that no action was taken on the asylum application. However, based on the granting of NACARA to the applicant's mother on July 17, 2001, the mother's asylum application, in which the applicant was added as a dependent, was administratively closed.

Nevertheless, the record further indicates that the applicant filed a separate Form I-589 on August 7, 1996, under receipt number WAC 96 223 50019. There is no indication in the record of proceeding or CIS database that the applicant ever withdrew this asylum application or that the asylum application has ever been adjudicated. Therefore, it is concluded that the applicant's asylum application (WAC 96 223 50019) is still pending, and the applicant qualifies for late initial registration on this basis.

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 sole ground for denial of the application has been overcome.

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.

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