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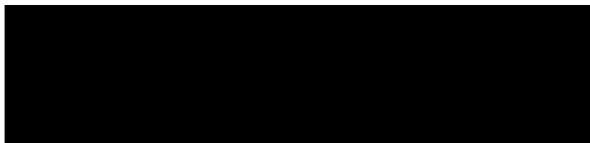
Date: OCT 22 2007

[WAC 05 126 70043 as it relates to EAC 04 154 54185 and EAC 01 228 57277]

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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial TPS application was denied by the Director, Vermont Service Center. Another application also was denied by the director. An appeal was filed before the Administrative Appeals Office (AAO) that was dismissed. A subsequent application for re-registration was denied by the Director, California Service Center, and is now before the AAO on appeal. The initial applications will be reopened, *sua sponte*, by the Chief, AAO on appeal. The appeal will be sustained and the application will be approved.

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 record of proceeding reveals that the applicant filed a TPS application during the initial registration period under CIS receipt number EAC 01 228 57277. The Director, Vermont Service Center, denied that application on June 30, 2003, due to abandonment, because the applicant failed to respond to the director's request for evidence. Since the application was denied due to abandonment there was no appeal available; however, the director informed the applicant that she could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The record also shows that the applicant filed a TPS application subsequent to the initial registration period under CIS receipt number EAC 04 154 54485. The Director, Vermont Service Center, denied that application on October 1, 2004, because the applicant failed to respond to a request for evidence to establish her eligibility for late registration. The applicant filed an appeal on November 3, 2004. The AAO dismissed the appeal on December 27, 2005, because the applicant failed to submit evidence to establish that she had met any of the criteria for late registration as described in 8 C.F.R. § 244.2(f)(2).

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 3, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts her claim of eligibility 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 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.

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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted with validity 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 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 applicant submitted the following documentation on appeal:

1. A copy of the applicant's Department of Motor Vehicles Driver History Record from the States of Virginia which lists her motor vehicle history from 1998 through 2006;
2. Copies of the applicant's income tax records, including IRS Form 1040, U.S. Individual Income Tax Returns, and IRS Form W-2, Wage and Tax Statements for the 1993 through the 2004 tax years;
3. A letter from the general manager of Celebration Hospitality, Inc., in which he stated that the company has employed the applicant since October 14, 1999; and,
4. A letter from the office administrator for Healthcare for Women in which she stated that the applicant has been under continuous medical care by the OB GYN facilities since January 2, 2000.

The applicant filed her initial TPS application on July 13, 2001, which was during the initial registration period for El Salvadorans. Hence, the record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar her from receiving TPS. Therefore, the director's decision will be withdrawn and the initial application will be approved.

The director's denial of the applicant's TPS application receipt number WAC 05 126 70043, filed on February 3, 2005, is dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the February 3, 2005 application will be sustained and that application will also be approved.

It is noted that there is an outstanding removal order that was issued by the Immigration and Naturalization Service on December 1, 1994, for the removal of the applicant from the United States, after she failed to depart from the country under a voluntary departure order dated November 4, 1993.

It is also noted that there is an unadjudicated Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, filed on September 2, 2005, in conjunction with a Form I-130 application filed on the applicant's behalf.

ORDER: The initial application is reopened and the director's denial of the initial application is withdrawn. The applications are approved, and the appeal is sustained.