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FILE:

OFFICE: California Service Center

DATE:

FEB 29 2008

[WAC 05 15973954]

INRE:

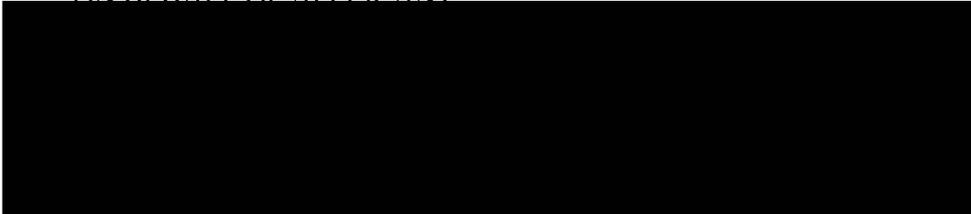
Applicant:



APPLICATION:

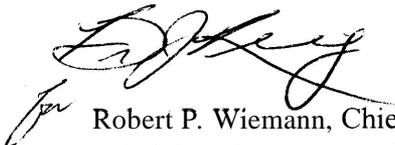
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. 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 (CSC). It is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn. The appeal will be sustained.

The applicant is a citizen of El Salvador who is applying to re-register for 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 it was not timely filed.

On appeal the applicant asserts that she is eligible for TPS and submits supporting documentation, including evidence of a previous grant of 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 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.

El Salvadoran nationals applying for TPS must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension valid through March 9, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she satisfied at least one of the conditions enumerated in 8 C.F.R. § 244.2(f)(2) above.

The applicant filed her initial Form I-821, Application for Temporary Protected Status, at the Vermont Service Center (VSC) on September 4, 2001 [EAC 02 002 54208], during the initial registration period for El Salvadoran nationals. It was approved on January 19, 2002.

The applicant subsequently filed an application to re-register for TPS at the CSC on February 7, 2005 [WAC 05 159 73954]. Though the applicant identified the Form I-821 as a re-registration application, the CSC director mistakenly treated it as an initial application and denied it on August 4, 2006, on the ground that the application was filed long after the close of the initial registration period and the applicant had not established her eligibility for late registration under 8 C.F.R. § 244.2(f)(2). The applicant has appealed.

The CSC director erred in denying the re-registration application on the ground of late filing. The applicant had already filed a TPS application during the initial registration, which was approved. The re-registration application at issue here was filed during a subsequent period specifically designated for re-registrations. Therefore, the application should have been approved unless the record showed that the applicant was no longer eligible for TPS. The record indicates that the applicant has continued to maintain the conditions of eligibility for TPS, in accordance with 8 C.F.R. § 244.17. Accordingly, the denial of the re-registration application will be withdrawn. The appeal will be sustained, and the application approved.

An alien applying for TPS 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 CSC director's decision of August 4, 2006, is withdrawn. The appeal is sustained, and the application approved.