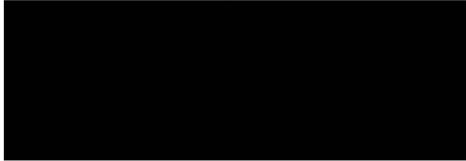


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**U.S. Citizenship
and Immigration
Services**

PUBLIC copy



MU

FILE:



[EAC 06 011 70529]

Office: Vermont Service Center

Date:

JAN 022008

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:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vennont Service Center (Vsq, and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn and the appeal will be sustained.

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 failed to establish that she was eligible for late registration. The director also denied the application because the applicant failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant asserts her eligibility for TPS and submits additional evidence in support of her claim.

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 IOI(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.

- (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 by the Secretary of the Department of Homeland Security, with validity until September 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).

On April 11, 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 her continuous physical presence in the United States since March 9, 2001, to the date of filing her application.

In response, the applicant submitted some evidence regarding her residence and physical presence in the United States. The applicant also submitted copies of her previously issued Employment Authorization Documents (EADs) as well as copies of the biographical pages from her El Salvadoran passport. The director determined that the applicant failed to establish her eligibility for TPS late registration as well as her qualifying continuous physical presence in the United States, and therefore, denied the application on June 14, 2006.

On appeal, the applicant states that she filed her application for TPS one month after she was notified that her asylum application was no longer pending. The applicant also submits copies of her TPS and employment authorization applications along with a United States Postal Service receipt dated October 5, 2005.

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed her application on October 11, 2006, after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 applicant claims on the Form 1-821, Application for Temporary Protected Status, that she married on November 24, 1998. **The record of proceedings** also contains a copy of her marriage certificate reflecting that she was married to _____ on March 4, 1998, at Santa Fe, New Mexico. Further, a review of _____ record reflects that he was granted temporary protected status on August 22, 2006. As such, the applicant has established that she has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the director's decision to deny the application on this ground will be withdrawn.

The second issue in this proceeding is whether the applicant has established her continuous physical presence in the United States during the requisite time period.

A review of the record of proceedings reflects that the applicant has submitted sufficient evidence to establish her continuous physical presence in the United States. The record contains copies of the applicant's Employment Authorization Documents issued from December 8, 2000, to June 2, 2005. In addition, the applicant provided several copies of Women, Infants, and Children (WIC) Certification Reports for her two children, _____ and _____ . These reports reflect that her children had physician visits and monthly educational plans from October 1999 through November 2003, and that the applicant was certified by WIC on December 22, 2000. The applicant also provided copies of her Internal Revenue Service (IRS), U.S. Individual Income Tax Returns, for the years 1999 through 2004.

A review of the evidence establishes that the applicant has continuously resided in the United States since February 13, 2001, and continuously physically present in the United States since March 9, 2001, to the date of filing her application. Therefore, the director's decision on these issues will also 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 director's decision is withdrawn and the appeal is sustained.