



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 09 2008
[WAC 06 132 70032]

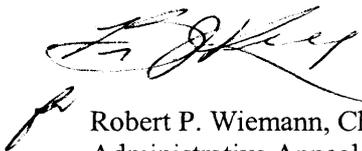
IN RE: Applicant: [REDACTED]

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), 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 record reveals that the applicant filed a TPS application during the initial registration period on April 18, 2001, under receipt number LIN 01 170 52183. The Director, Nebraska Service Center (NSC), denied that application on November 21, 2001, because the applicant had failed to submit sufficient evidence to establish continuous residence in the United States since February 13, 2001. Although the applicant was advised that she could appeal the NSC director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the NSC director's decision, the record does not contain evidence that the applicant filed a Form I-290B,

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 9, 2006, under receipt number WAC 06 132 70032, and indicated that this is her "first application to register for Temporary Protected Status (TPS)."

The CSC director treated the application as a re-registration application and determined that because the applicant's initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS; therefore, the CSC director denied the application on August 16, 2006.

The applicant, in this case, was not filing a re-registration application but, rather, she was filing her first or initial application. Therefore, this application will be treated as the applicant's "first application" to register for TPS, the decision of the director will be withdrawn, and a decision will be made based on late initial application.

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 TPS application on February 9, 2006.

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 response to a Notice of Intent to Deny dated June 14, 2006, the applicant submitted school records from the Des Moines [Iowa] Independent Community School indicating that she attended classes at that school during the school years 1997 through 2006, inclusive. She also submitted copies of Form I-797, Notice of Action, indicating that her mother [REDACTED] and her father [REDACTED] were both approved TPS on March 16, 2006.

The CSC director did not address the evidence furnished by the applicant but, rather, issued a notice of decision denying the applicant's TPS application on August 16, 2006, after concluding that the applicant was not eligible to apply for re-registration for TPS.

A review of USCIS records indicate that the applicant's parents were indeed approved TPS status on March 16, 2006. Accordingly, the applicant has established that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(iv) as the child of an alien granted TPS.

Additionally, the applicant has submitted sufficient evidence to establish that she has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). 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.