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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



FILE:

Office: VERMONT SERVICE CENTER

Date: MAR 03 2008

[EAC 06 334 77022]

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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn. The case will be remanded for further consideration and action.

The applicant is a citizen of El Salvador who is applying 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 because the applicant failed to establish that she was eligible for late registration.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

On appeal, the applicant submits a brief statement and additional documentation.

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 section 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 conditions described in paragraph (f)(2) of this section.

Persons applying for TPS offered to 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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The applicant filed her initial Form 1-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on August 14, 2006 - almost four years after the initial registration period had ended.

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 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On December 19, 2006, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. She was also requested to submit evidence of her nationality/identity, and her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The record reflects that the applicant failed to respond to the request.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on February 13, 2007.

On appeal, the applicant submits a photocopy of the biographic Salvadoran passport, generic
rent receipts dated January and March 2001, and an affidavit from stating that the applicant has
been employed by him since October 2000.

A review of alien registration file [REDACTED] reflects that the applicant submitted a Form 1-589, Request for Asylum in the United States, on July 3, 1989. The District Director, Los Angeles, California, denied that

application on May 9, 1990, and initiated deportation proceedings against the applicant. On January 14, 1991, an Immigration Judge (11) in Falls Church, Virginia, administratively closed those proceedings in order to afford the applicant an opportunity to apply for TPS and exercise her rights resulting from the stipulated settlement in *American Baptist Churches et al v. Richard L. Thornburgh, et al.*, No. 85-3255 (N.D. Cal., Dec. 19, 1990) ("ABC"). Administrative closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. See *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).

Since the applicant had a request for asylum pending during the initial registration period, she is eligible to file an application for late registration. Therefore, the director's decision to deny the application on this ground will be withdrawn. However, a late-filing applicant must meet the same continuous residence and continuous physical presence requirements as all other TPS applicants.

Based on the documentation contained in the record, the applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing her TPS application on August 14, 2006. Therefore, the case will be remanded to the director for consideration and discussion of all issues pertinent to this case. The director may request any additional evidence he considers pertinent. Similarly, the applicant may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the director is withdrawn. The case is remanded for further consideration and action.