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U.S. Department of Homeland Security
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Washington, DC 20529



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

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FILE:



Office: California Service Center

Date: **MAR 13 2008**

[WAC 05 228 78680]

INRE:

Applicant:

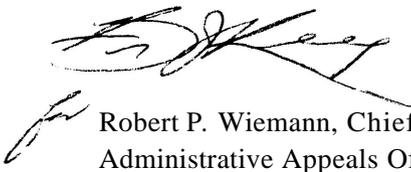


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 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). A subsequent appeal was dismissed by the Director, now Chief, Administrative Appeals Office (AAO). A motion to reopen was rejected by the CSC director. The matter is now before the AAO on a subsequent motion to reopen. The current motion to reopen will be granted 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's initial TPS application had been denied, and the applicant was not eligible to apply for re-registration for TPS.

A subsequent appeal from the director's decision was dismissed on December 4, 2006, after the AAO also concluded that the applicant was not eligible to re-register for TPS. The AAO also determined that the applicant failed to show that the current application should be accepted as a late initial registration. In addition, the AAO determined that the applicant did not establish that she is the spouse of an eligible TPS registrant.

On December 27, 2006, the applicant submitted a motion to reopen. That motion to reopen was rejected by the director on January 29, 2007.

The applicant filed this subsequent motion to reopen on February 16, 2007. On the current motion to reopen, the applicant asserts her eligibility for TPS late registration and submits some 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 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 § 244.4; and
- (t) (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 entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, 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 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).

On motion, the applicant asserts her eligibility for TPS and submits an explanation regarding the facts in support of her claim.

In addition, the applicant submits copies of the following documentation: the decision of the AAO dated December 4, 2006; a letter dated March 19, 2005, regarding her TPS application and the current TPS application as well as an employment authorization application signed on March 19, 2005; her EI Salvadoran marriage certificate and personal identification card (Cedula) with English translations: two consultation reports dated October 25, 2002, and October 1, 2003, from the University of Texas Southwestern Medical Center; her Medicaid Identification dated October 30, 2000, July 31, 2002, September 30, 2002, and November 30, 2002; an appointment letter dated March 26, 2002, from the East Dallas Women's Health Care Center; a Notice of Action from the Texas Department of Human Services dated January 17, 2002; a letter written in Spanish dated October 22, 2001, from The University of Texas, Southwestern Medical Center; a letter dated June 28, 2001, from the Texas Department of Human Services; three Gigante Express receipts dated February 15, 2000, June 29, 2000, and August 31, 2000; her hospital discharge report from the Parkland Health & Hospital Systems dated January 8, 2000; and a letter dated June 2001, from the East Dallas Clinic, Dallas, Texas.

The applicant, in her brief, asserts her eligibility for TPS late registration. She states that she has resided in the United States since 1998, and that she is married to an alien who is currently a TPS registrant. The applicant also states that she filed the current application as a late initial registration.

In her motion, the applicant also explains the discrepancies in her claimed marital status on her TPS applications. The applicant also provides evidence showing that she married _____, in EI Salvador on March 16, 1988.

A review of the record of proceedings reflects that the applicant indicated the current application as her first application for TPS, not a re-registration for TPS. It appears that the director erred in indicating that the current application was a re-registration for TPS.

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(t)(2) above. A review of the record of _____ reveals that he was granted TPS on February 25, 2003, and therefore, he is an eligible TPS registrant. Additionally, on motion, the applicant has provided sufficient documentation of her marriage to _____
_____. The applicant has submitted sufficient evidence to establish her eligibility for "late registration described in 8 C.F.R. § 244.2(t)(2).

Furthermore, the applicant has submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence since March 9, 2001, to the date of filing her application. Given that the record fails to reflect any other ineligibility issues, the director's decision to deny the current application 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.