

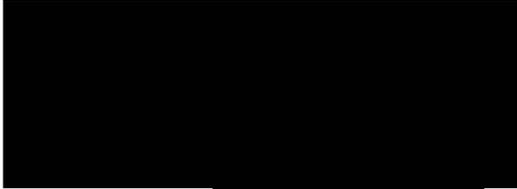
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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



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

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FILE: [REDACTED]  
[EAC 06 142 50803]

OFFICE: Vermont Service Center

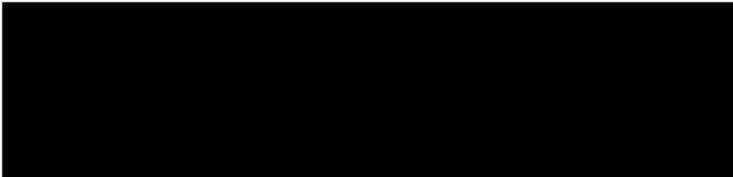
DATE: **MAR 13 2008**

INRE: Applicant:

APPLICATION: Application p ry  
and Nationality Act, 8 U.S.C. § 1254

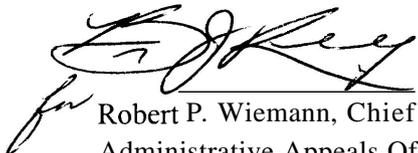
44 of the Immigration

ON BEHALF OF APPLICANT:



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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center (VSC). The application is now before the Administrative Appeals Office (AAO) on appeal. 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 her **qualifying** physical presence in the United States during the requisite time periods.

On appeal, the applicant asserts her eligibility for 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 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.

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. Subsequent extensions of the TPS designation have 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 July 7, 2006, the applicant was requested to submit additional evidence to establish her qualifying continuous residence in the United States and continuous physical presence in the United States during the requisite time periods for El Salvadoran TPS. The applicant responded to the director's request and submitted some documentation.

The director determined that the applicant failed to establish her qualifying continuous physical presence in the United States, and therefore, denied the application on September 13, 2006. It is noted that the director stated in his decision that the applicant established her qualifying continuous residence in the United States, as well as her eligibility for TPS late registration.

On appeal, the applicant states that she came to the United States on December 14, 1999. The applicant also submits copies of the following: her marriage certificate reflecting that she **married** on April 13, 2000, in Siler City, North Carolina; her daughter's birth certificate showing that she was born on December 14, 2000, in Chapel Hill, North Carolina; several medical reports dated June 21, 2000, through June 26, 2006; medical reports for her daughter, , from \_\_\_\_\_ and a listing of immunizations dated December 25, 2000 through August 12, 2005; a benefit plans coverage report from \_\_\_\_\_ reflecting an effective date of October 1, 1998; two earnings statements from \_\_\_\_\_ dated January 1, 2006, and September 10, 2006; and her Internal Revenue Service (IRS) Form W-2, Wage and Tax Statements, for the years: 2002, 2003, 2004, and 2005.

A review of the complete record of proceedings reflects that the applicant has established her qualifying 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 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.