



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

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **MAR 13 2008**
[EAC 07 053 51322 Appeal]
[EAC 05 229 79635 Application]

INRE: Applicant: [REDACTED]

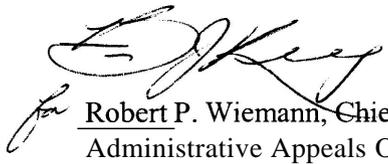
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. 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 and is now before the Administrative Appeals Office on appeal. The appeal is 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, on May 17, 2005, under receipt number EAC 05 229 79635 which was denied by the TSC Director on January 8, 2007, because the applicant had failed to establish she had met the continuous residence and continuous physical presence requirements for TPS.

On appeal, counsel states:

The service erred in denying TPS application. Applicant can demonstrate that she resided in the United States as of February 13, 2001 and has been continuously present from March 9, 2001 to the date of filing.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General 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.

(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 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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her application with Citizenship and Immigration Services on May 17, 2005.

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.

The record contains the following documentation concerning continuous residence and continuous physical presence during the required periods from February 13,2001 until June 20, 2005:

1. A copy of a Certificate of Marriage Registration from the New York State Department of Health showing that she and [REDACTED] were married in the Town of Kent on December 3, 1999.
2. A letter dated February 12,2001 from [REDACTED] requesting that his wife [REDACTED] be added to his pending Form 1-589, Request for Asylum in the United States.
3. A copy of the applicant's Republic of El Salvador passport issued to her on July 18, 2001 in the State of New York.

4. A copy of the applicant's Verizon bills for the periods from January 25, 2002 to February 24,2002, and April 25, 2005 to May 24,2005.
5. A birth certificate for her son who was born in Danbury, Connecticut, on September 10, 2002.
6. Checks written by the applicant on her Mahopac, New York, checking account on January 30, 2003, February 24, 2003, May 23, 2003, June 1, 2003, July 14, 2003, August 16,2003, October 8, 2003, September 24, 2004, January 16, 2005, January 18, 2005, February 15, 2005, September 28,2005, October 3,2005, and October 7,2005.
7. The applicant's bank statements from Putnam County National Bank in Carmel, New York, dated November 18,2004, June 16,2005, and March 16,2006.
8. A copy of the applicant's invoice dated July 14, 2003, from Little Apple Portraits, Inc. in Mohegan Lake, New York.
9. The applicant's IRS Forms 1040, U.S. Individual Income Tax Return, for the years 2002, 2003 and 2004 prepared on March 29, 2005.
10. Copies of Western Union money transfer documentation dated May 12, 2002, August 5, 2002, December 31, 2004, March 21, 2005 and July 14, 2005, showing that the applicant sent funds to persons in EI Salvador.
11. A copy of the applicant's discharge plan for services from Putnam Hospital Center in Carmel, New York, dated September 19,2006.

After review of the record, it is determined the applicant has submitted sufficient evidence to establish that she has met the continuous residence and continuous physical presence requirements described in the regulations at 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 above requirements and is 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.