



U.S. Citizenship
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Services

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FILE:

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OFFICE: California Service Center

DATE: MAY 12 2008

[WAC 06 007 70121J

INRE:

Applicant:

[REDACTED]

APPLICATION:

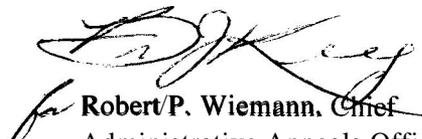
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.c. § 1254

ON BEHALF OF APPLICANT:

[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.


for **Robert P. Wiemann, Chief**
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant claims to be a 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 the current Form 1-821, Application for Temporary Protected Status, on October 7, 2005, and indicated that she was filing a late initial application.

The director denied the application as a re-registration because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or late initial registration for TPS.

On appeal, counsel for the applicant asserts that this application is a late initial application for TPS, and that the applicant is qualified for late initial registration because she is married to an alien who is currently eligible 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.

- (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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, 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).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed this application with Citizenship and Immigration Services (CIS) on October 7, 2005. 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.

On February 6, 2006, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The

applicant, in response, provided documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for re-registration and denied the application on May 8, 2006.

On appeal, the applicant asserts that she is married to an alien who is currently eligible for TPS.

The applicant has submitted a translated marriage certificate showing the name of her husband, as well as his Employment Authorization Document indicating that he is a TPS registrant. Thus, the applicant has established she is eligible for late registration and the director's decision on this issue will be withdrawn. 8 C.F.R. § 244.2(t)(2)(iv).

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001.

The record contains pay-stub receipts, tax documentation, and letters, all of which tend to corroborate her assertions of residence and continuous presence during the required periods. The record indicates that the applicant filed her initial application in September of 2002, and also contains pay-stub receipts, letters, and tax documentation.

The applicant has submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. She has, therefore, established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be withdrawn.

The appeal will be sustained for the above stated reasons. An alien applying for TPS 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.