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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:



OFFICE: Vermont Service Center

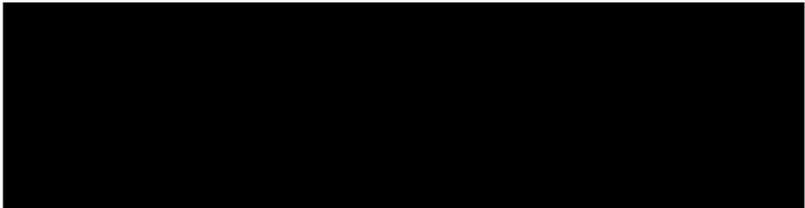
DATE:

MAY 29 2007

[EAC 06 154 51130 – as it relates to
EAC 01 228 59806]

IN RE:

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:



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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Vermont Service Center (VSC). The second application was also denied by the Director, VSC, and is currently on appeal before the AAO. The matter will be remanded to the director for further action and the entry of new decisions on both applications.

The applicant is 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 director denied the initial application on the ground of abandonment and the second application on the ground that the applicant had failed to establish that she was eligible for late registration.

On appeal, the applicant submits copies of some materials already in the record.

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 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 applicant filed her first Form I-821, Application for Temporary Protected Status [EAC 01 228 59806], with the VSC during the initial registration period on July 13, 2001. It was denied by the director on the ground of abandonment on February 10, 2003, after the applicant failed to appear for a scheduled fingerprinting on May 29, 2002. A motion to reopen was dismissed by the director on June 30, 2003.

The applicant filed the current TPS application with the VSC [EAC 06 154 51130] on April 24, 2005. The director sent the applicant a notice of intent to deny on June 16, 2006, requesting the submission of evidence that she was eligible for late TPS registration, that she had resided in the United States continuously since February 13, 2001, and that she had been continuously physically present in the United States from March 9, 2001, to the date her application was filed. The applicant responded on June 28, 2006, with additional evidence. The director denied the application on August 2, 2006, on the ground that, although the record now established that the applicant met the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador, and that she was an El Salvadoran national, the applicant had not established that she was eligible for late TPS registration under any of the criteria enumerated at 8 C.F.R. § 244.4(f)(2). On appeal the applicant resubmits copies of previously submitted materials.

The AAO notes that although the second TPS application was not filed during the initial registration period for TPS applicants from El Salvador, the first application was. If the applicant has satisfied the other requirements for TPS, the first application could be reopened *sua sponte*, in accordance with 8 C.F.R. § 103.5(a)(5), to overcome the late filing ground for denial. Before the applicant can be approved for TPS, however, the record must include a fingerprint investigation of the applicant conducted by the Federal Bureau of Investigation (FBI). As previously discussed, the applicant missed her fingerprinting appointment in conjunction with the initial TPS application in 2002. Citizenship and Immigration Services records indicate that a fingerprint investigation request was sent to the FBI in conjunction with the current application as well – on May 17, 2006, and again on June 17, 2006 – but that no report has been received from the FBI. Until such a report is received, indicating that the applicant has no disqualifying criminal record, TPS cannot be approved.

Accordingly, the case will be remanded to the director to secure an FBI fingerprint report on the applicant and, thereafter, to issue new decisions on the applicant's initial and current TPS applications.

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

ORDER: The case is remanded to the director for further action consistent with the above and the entry of new decisions.