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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 05 2008
[WAC 01 239 56535]
[WAC 05 132 74721]

IN RE: 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 California Service Center. 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 Director, California Service Center (CSC), denied the initial application. The director also denied a subsequent application for re-registration which is now before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the appeal will be sustained.

The applicant is a native and citizen of El Salvador who seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director denied the re-registration application because the applicant had not previously been granted TPS.

On appeal, the applicant asserts that her local CIS office told her that if she wanted a new work permit, to file a new TPS application, rather than a re-registration, because she had initially failed to appear for fingerprinting.

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 as designated by the Attorney General is eligible for temporary protected status 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 section 244.3;
- (e) is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The burden of proof is on 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 record reflects that the applicant filed a TPS application on May 23, 2001 (WAC 01 239 56535) – during the initial registration period for Salvadorans. In support of her application, the applicant submitted various documents to establish her identity, nationality, and, continuous residence and continuous physical presence, including a Pacific Bell telephone bill addressed to the applicant, issued on January 26, 2001, and due by February 26, 2001. The address on her phone bill and her TPS application indicated residence in Los Angeles, California.

On July 21, 2003, the applicant filed an application for re-registration, listing a new address in Las Vegas, Nevada.

On October 22, 2003, CIS mailed the applicant a fingerprint appointment notice to the Los Angeles, California address listed on her initial application. The applicant did not appear for fingerprinting.

On January 21, 2004, the director deemed the application abandoned, due to the applicant's failure to appear for fingerprinting. The applicant was informed that a denial for abandonment could not be appealed, but that she could file a motion to reopen within 30 days from the date of the denial.

The applicant filed a motion indicating that she had moved to Las Vegas, Nevada, in the intervening two and a half year's between the filing of her initial application and the issuance of the fingerprint notice. In support of her motion, the applicant submitted various documents including, her Nevada Identification Card, dated February 28, 2003; an employment verification letter from The Orleans Hotel & Casino, indicating that the applicant had been

hired on March 6, 2003; two pay stubs from the Orleans Hotel & Casino, dated March 14, 2003, and March 28, 2003; and, records from the Clark County School District in Las Vegas, Nevada, for two of the applicant's children, indicating that they had enrolled in Vegas Verdes Elementary School on March 12, 2003. The director denied the motion, finding that the applicant failed to notify the director of her change of address and that the applicant submitted a pay stub from an employer in Van Nuys, California, dated during the time in question.

During subsequent re-registration periods, the applicant filed applications that were accepted under the late filing provisions of 8 C.F.R. 244.2. In support of these applications, the applicant submitted additional evidence relating to her qualifying continuous residence and continuous physical presence.

On December 19, 2005, the applicant filed the current application (WAC 06 080 70319) with the director, CSC. Although the applicant indicated that this was her initial application, the director, CSC, treated the application as an application for re-registration. In support of her application, the applicant submitted photocopies of various documents, including a 2001 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, with corresponding 2001 IRS Form W-2, Wage and Tax Statement.

On February 5, 2006, the director requested that the applicant submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director also requested that the applicant submit evidence establishing her qualifying continuous residence and continuous physical presence. In response, the applicant submitted additional evidence relating to her residence and physical presence.

On, April 4, 2007, the director denied the application because the applicant had not previously been granted TPS.

On appeal, the applicant asserts that her local CIS office told her to file a new TPS application, rather than a re-registration, because she had initially failed to appear for fingerprinting

The Pacific Bell Telephone receipt and the Forms 1040 and W-2 show residence and physical presence immediately prior to and during the initial registration period. These documents indicate residence and physical presence in Los Angeles, California, and establish that the applicant continuously resided in the United States since before February 13, 2001, through the date of filing of her initial application, on May 23, 2001. Consequently, the applicant has submitted sufficient evidence to establish that she has met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).

If the applicant has satisfied the other requirements for TPS, the first application can be reopened *sua sponte*, in accordance with 8 C.F.R. 103.5(a)(5). The applicant has satisfied the requirements for establishing her continuous residence and continuous physical presence from the required dates in 2001 to the date of filing of her initial application. The record contains a photocopy of the biographical page of the applicant's passport, which establishes her identity and her Salvadoran nationality. The record also contains results from a recent fingerprint investigation of the applicant conducted by the Federal Bureau of Investigation (FBI) issued on March 6, 2007, indicating no criminal record that would bar the applicant from TPS eligibility. The applicant has satisfied all other requirements for TPS. Therefore, the initial application is reopened and approved.

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. The initial application is reopened, *sua sponte*, and the application is approved.