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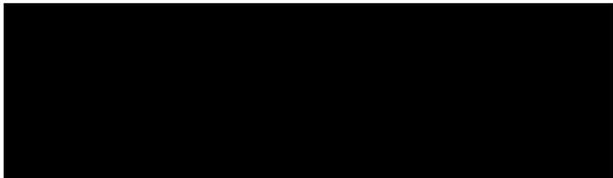
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 06 117 70003]

Office: VERMONT SERVICE CENTER

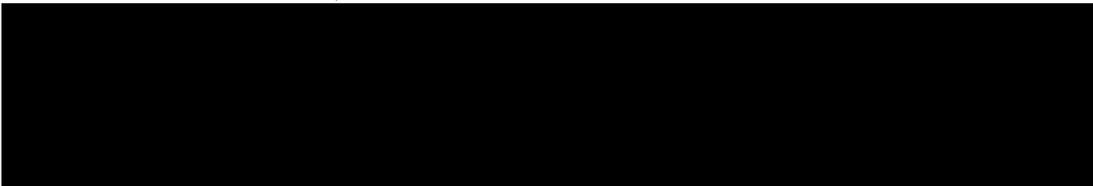
Date: FEB 12 2008

IN RE: Applicant:



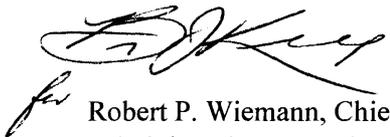
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the 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 (AAO) on appeal. The director's decision will be withdrawn, and the case will be remanded for further consideration and action.

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 director denied the application because the applicant failed to establish that she was eligible for late registration.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

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 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.

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. The record reveals that the applicant filed her initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on January 24, 2006 - more than 3 years after the initial registration period had ended.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 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 June 29, 2006, the director requested the applicant to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant responded on August 2, 2006.

On December 15, 2006, the director denied the application on the ground that the applicant had failed to establish that she was eligible for late registration.

On appeal, counsel asserts that the applicant is eligible for late registration because she had an application for asylum pending as of January 2006, when she applied for TPS.

A review of the alien registration file relating to the applicant's spouse, [REDACTED], reveals that he filed a Form I-589, Application for Asylum or for Withholding of Deportation, on February 13, 1995. There is also an undated letter to the applicant's spouse, with the applicant included as a dependent, stating that the Form I-589 was being denied due to abandonment for failure to appear for an asylum interview on February 21, 2006.

In the applicant's file, there is a letter, dated January 5, 1998, from her spouse requesting that the applicant be added as a dependent on his Form I-589 application. There is also a Form I-213, record of Deportable/Inadmissible Alien, indicating that removal proceedings were initiated against the applicant because her asylum application was denied on July 12, 2005, and that the denial notice was mailed on July 13, 2005. However, the record does not include a copy of the denial notice, nor of any CIS computer records substantiating its issuance.

On appeal, counsel for the applicant also submits a photocopy of an interview notice, dated November 22, 2005, addressed to the applicant's spouse, with her listed as a dependent, requesting that they appear for an interview in connection with a Form I-888, Application for Suspension of Deportation or Special Rule Cancellation of removal under the Nicaraguan Adjustment and Central America Relief Act (NACARA),¹ on December 1, 2005. However, the referred-to Form I-888 is not contained in either the applicant's or her spouse's file.

The record of proceedings in this case appears to be incomplete. *See* Service instructions at O.I. 103.3(c). It is also noted that, beyond the decision of the director, the applicant has not submitted sufficient evidence to establish her nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1).

Therefore, the case will be remanded to the director for consideration and discussion of all issues pertinent to this case. The director may request any additional evidence he considers pertinent. Similarly, the applicant may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

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

ORDER: The decision of the director is withdrawn. The case is remanded for further consideration and action.

¹ The Nicaraguan Adjustment and Central American Relief Act, Public Law 105-100 (NACARA).