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U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 07 010 70931]

OFFICE: VERMONT SERVICE CENTER

DATE: FEB 15 2008

IN RE: Applicant:



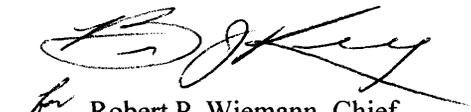
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the 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, Vermont Service Center (VSC). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

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 application on the ground that the applicant failed to establish she was eligible for late TPS registration.

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

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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.

El Salvadoran nationals applying for TPS 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.

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

The record reveals that the applicant filed a first, initial Form I-821, Application for Temporary Protected Status, with the California Service Center (CSC) on May 26, 2005 (WAC 05 239 70351 relates). The application was denied on May 18, 2006, because the applicant failed to establish her eligibility for late registration.¹

On August 3, 2006 - almost four years after the initial registration period for El Salvadorans had expired - the applicant filed the current Form I-821, indicating that it was an initial TPS application. The VSC director denied the application on February 13, 2007, on the ground that it was not filed during the initial registration period and the applicant did not qualify for late registration under 8 C.F.R. § 244.2(f)(2). The applicant, through counsel, filed her appeal from that decision on March 16, 2007.

On appeal, counsel asserts that the applicant is eligible for late registration because she had an application for asylum pending during the initial registration period and filed her initial TPS application within 60 days of learning that her asylum application had been terminated. In support of the appeal, counsel submits documentation including a series of Employment Authorization Cards (EACs) issued to the applicant as an asylum applicant (category: C08) from December 1999 through May 2005.

A review of the record reveals that the applicant entered the United States without inspection on or about April 27, 1991, and filed a Form I-589, Request for Asylum in the United States, on September 10, 1991. The applicant was interviewed on October 20, 1994, and her asylum request was denied by the Houston, Texas, District Asylum Office on January 12, 1995. In deportation proceedings before an Immigration Judge (IJ) in Denver, Colorado, on February 6, 1996, the IJ denied the applicant's requests for asylum and withholding of

¹ According to the record, the applicant attempted to file a Form I-821 (EAC 06 319 73370 relates) with the VSC on August 3, 2006. However, the application was returned to her on August 17, 2006, because an incorrect fee had been submitted. There is no indication that that application was ever resubmitted with the correct fee.

deportation and granted the applicant voluntary departure to El Salvador on or before March 6, 1996, with an alternate order of deportation if she failed to depart. On May 1, 1996, the applicant's prior counsel filed an appeal from the IJ's decision with the Board of Immigration Appeals (BIA). On June 18, 2001, the BIA administratively closed the proceedings.

It is noted that the applicant's prior counsel formally withdrew her representation of the applicant on May 31, 1996, shortly after filing the appeal with the BIA. However, the notice issued by the BIA administratively closing the applicant's deportation proceedings was sent to the applicant's prior counsel, not the applicant herself, more than five years after the filing of the appeal and withdrawal of representation. Meanwhile, CIS records indicate that the applicant continued to file for employment authorization in succeeding years, and was granted serial extensions over the years 1999-2005, the last of which was valid until May 26, 2005, on the basis of a pending asylum request.

Based on the foregoing record, the AAO agrees that the applicant is eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii) because her asylum request filed in December 1994 was still pending at the time her first, initial TPS application was filed in May 2005. Accordingly, the director's decision to deny the application on the ground of failure to establish eligibility for late TPS registration will be withdrawn.

Based on ample evidence contained in the record - including correspondence with Citizenship and Immigration Services (CIS), and its precursor, the Immigration and Naturalization Service (INS), and various documentation dating from 1991 through 2007 - the AAO determines that the applicant has submitted sufficient evidence to establish her continuous physical presence in the United States since March 9, 2001, and continuous residence in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). The evidence on record - including photocopies of the applicant's birth certificate, with English translation, and the biographic page from her passport - also establishes the applicant's identity and El Salvadoran nationality, in accordance with the requirements of 8 C.F.R. § 244.2(a). Furthermore, the record does not reveal any grounds of ineligibility for TPS. Consequently, the appeal will be sustained and the application will be approved.

An alien applying for Temporary Protected Status 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. Here, the applicant has met that burden.

ORDER: The appeal is sustained. The decision of the VSC director, dated February 13, 2007, is withdrawn. The application is approved.