



U.S. Citizenship
and Immigration
Services

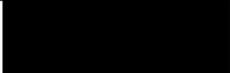
PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

MI



FILE:



OFFICE: California Service Center

DATE: **JAN 18 2008**

[WAC 01 187 54414]

[WAC 04 098 51867 – Motion]

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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), on the ground of abandonment. It is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion will not be granted, but the AAO will reopen the proceeding *sua sponte* and approve the application.

The applicant is a national and 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.

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.

- (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.

El Salvadoran nationals applying for TPS 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 El Salvadorans was from March 9, 2001, through September 9, 2002. Extensions of the TPS designation have been granted, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

The record shows that the applicant filed her first Form I-821, Application for Temporary Protected Status, at the CSC on April 23, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 187 54414. On February 2, 2004, the director denied the application on the ground of abandonment "due to non-payment of the fee for fingerprinting." On March 10, 2004, the applicant filed a motion to reopen in which she asserted that she did not keep her fingerprinting appointment in January 2003 because it was scheduled in Los Angeles, California, while she had moved in June 2002 to Utah. The record includes a photocopy of a letter from the applicant to the California Service Center, dated June 7, 2002, advising the CSC of her new address in Utah.

Citizenship and Immigration Services (CIS) records show that the applicant was fingerprinted in conjunction with subsequent TPS applications she filed in 2005 and 2007. No criminal record was found that could make her inadmissible to the United States. Thus, the applicant has overcome the ground for the denial of her initial TPS application. The record includes a photocopy of the applicant's passport showing that she was born in El Salvador on December 10, 1972, thereby establishing her qualifying nationality in accordance with 8 C.F.R. § 244.2(a). The record also shows that the applicant was admitted to the United States on June 14, 2000, as a non-immigrant visitor for six months, and remained in the United States without authorization after her visa expired on December 14, 2000. Based on all the evidence of record, the applicant has established her continuous physical presence in the United States since March 9, 2001, and her continuous residence in the United States since February 13, 2001, as required for El Salvadoran nationals under 8 C.F.R. § 244.2(b) and (c). The applicant filed her first TPS application during the initial registration period for El Salvadorans nationals. The record does not indicate any grounds of ineligibility for TPS.

The AAO notes that the motion to reopen, after initially being rejected because it was not accompanied by the correct fee, was filed 37 days after the date of the abandonment decision by the CSC. A motion to reopen or reconsider, like an appeal, must be filed within thirty days of the underlying decision (33 days if the decision was served by mail), except that failure to file during this period may be excused at the Service's discretion when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant. *See* 8 C.F.R. § 103.5(a)(1)(i) and 8 C.F.R. § 103.5a(b). While the delay in this case may not have been beyond the applicant's control, CIS regulations also give Service officers the discretion to reopen a proceeding or reconsider an opinion *sua sponte* for the purpose of making a favorable decision, if the circumstances warrant such an action. *See* 8 C.F.R. § 103.5(a)(5)(i).

The AAO concludes that the applicant has established her eligibility for TPS. Accordingly, while the motion to reopen will not be granted because it was late filed, the AAO will reopen the initial application *sua sponte*. The denial of that application by the CSC on February 2, 2004, will be withdrawn. The application will be approved.¹

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. The applicant has met that burden.

ORDER: The initial application [WAC 01 187 54414] is reopened *sua sponte*, the CSC's decision of February 2, 2004, is withdrawn, and the application is approved.

¹ It is also noted that an Immigration Judge in Salt Lake City granted the applicant TPS by order dated March 21, 2007.