

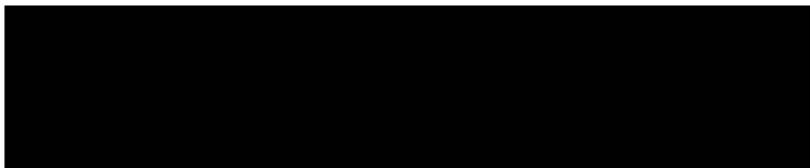
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUN 09 2008

[WAC 0521578948]

INRE:

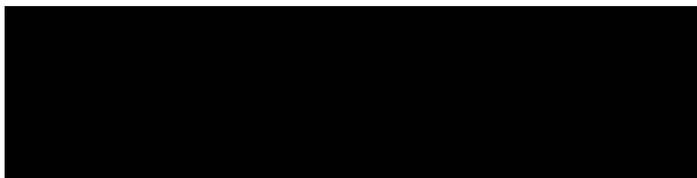
Applicant:



APPLICATION:

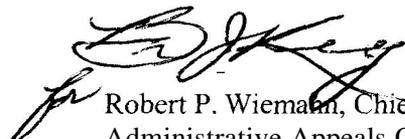
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.c. § 1254

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. Wieman, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the application will be approved.

The applicant is a native 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.

The record reveals that the applicant filed a late initial TPS application on March 3, 2005, under CIS receipt number WAC 05 215 78948. The director denied the application, on April 27, 2006, after determining that the applicant had failed to establish that she was eligible for late initial registration for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent 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 initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial application on March 3, 2005.

To **qualify** for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.P.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 Citizenship and Immigration Services (CIS). 8 C.P.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.P.R. § 244.9(b).

In a Notice of Intent to Deny (NOID) dated March 1, 2006, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit the final court dispositions of all of her arrests, including her arrests listed on the Federal Bureau of Investigation fingerprint results report. In response, the applicant resubmits court documents relating to her arrests previously furnished and contained in the record of proceeding:

1. On July 16, 1997, in the Superior Court of California, County of Los Angeles, Juvenile Court, Case No. _____ the applicant (a minor, having been born on March 18, 1982) was charged with violating § 601 of the California Penal Code (PC), "WITRU" [trespass subsequent to threat]. On December 5, 1997, the Juvenile Court dismissed the case.
2. On May 23, 1998, in the Superior Court of California, County of Los Angeles, Juvenile Court, Case No. _____ the applicant (name used: _____) was charged with violating § 245(a)(1) PC, "assault with a deadly weapon/force-not firearm: great

bodily injury likely." On July 28, 1998, the applicant was adjudged and declared a ward of the Juvenile Court, and she was placed on probation. On March 21, 2000, jurisdiction terminated and the applicant was released.

3. On December 31, 1998, the applicant was arrested for violating § 487(a) PC, "grand theft." The applicant submitted a letter from the Superior Court of California, County of Los Angeles, indicating that a search of Juvenile indexes was made and the record indicates that "no charges were filed by the District Attorney" relating to this arrest.

The record indicates that the applicant was born on March 18, 1982. She was 15 years of age when she was arrested on July 16, 1977 (No.1 above), 16 years of age when she was tried in Juvenile Court for the charge committed on May 23, 1998 (No.2 above), and 16 years of age when she was arrested for the offense committed on December 31, 1998 (No. 3 above). The Board, in *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BJA 1981), held that acts of juvenile delinquency are not crimes in the United States and that an adjudication of delinquency is not a conviction for a crime within the meaning of the Immigration and Nationality Act. The Board further held that since an act of juvenile delinquency is not a crime for the purposes of immigration laws, then such conduct cannot serve as the basis of a finding of inadmissibility. Accordingly, the applicant's juvenile record cannot act as a bar to her eligibility for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The director determined that the evidence provided by the applicant, in response to the NOM, failed to establish that she was eligible for late registration, and denied the application on August 27, 2006.

On appeal, counsel asserts that the applicant is eligible for late registration because her asylum application was filed on or about June 16, 1995, and continued pending until it was terminated on February 1, 2005, and that the applicant subsequently filed her TPS application on February 26, 2005. Counsel states that the applicant's twin sister who arrived in the United States on the same date and has also filed a TPS application after her asylum was terminated on the same day as the applicant, has already been granted TPS; therefore, the applicant's TPS application should also be granted. With the appeal, counsel submits a statement and additional evidence, including evidence previously furnished and contained in the record.

A review of the record of proceeding and CIS database indicate that on June 16, 1995, the applicant's mother [REDACTED] filed Form 1-589, Application for Asylum and for Withholding of Deportation. On June 28, 1995, [REDACTED]'s husband and three children, including the applicant, were included in her asylum application. On August 2, 2004, [REDACTED] and her three children each filed Form 1-88, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)). During an interview held on January 31, 2005, Ms. [REDACTED] NACARA application was approved; also on January 31, 2005 [REDACTED] withdrew her application for asylum. It is noted that during that interview, it was determined that the applicant and her twin sister were ineligible to apply for NACARA because they were over age 21 at the time their mother was approved; therefore, the applicant withdrew her NACARA application without prejudice. A letter dated January 31, 2005, was issued by the Los Angeles, California, Asylum Office notifying the applicant

¹ Juvenile delinquency is defined by the Federal Juvenile Delinquency Act, 18 U.S.C. 5031, as "the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult."

that her NACARA application has been dismissed. On February 1, 2005, the applicant was also notified that her application for asylum (Form 1-589) had been terminated.

As provided in 8 C.F.R. § 244.2(g), the applicant must file an application for late registration with the appropriate Service director within a 60-day period immediately following the denial of the application for NACARA and application for asylum, or immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(£)(2). The record, in this case, indicates that the applicant filed her initial TPS application on March 3, 2005, within the 60-day requirement. Accordingly, the applicant has established that she has met the criteria for late registration described in 8 C.F.R. § 244.2(£)(2)(ii).

Additionally, the evidence contained in the record of proceeding is sufficient to establish that the applicant has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c).

Accordingly, the director's decision will be withdrawn 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. The applicant has met this burden.

ORDER: The appeal is sustained and the application is approved.