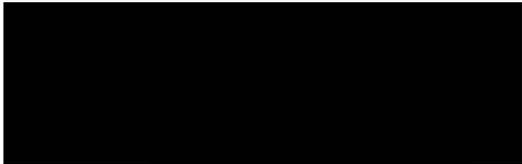


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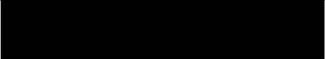


**U.S. Citizenship
and Immigration
Services**

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FILE:



[LIN 01 17951930]
[WAC 05 208 79305]

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 13 2008**

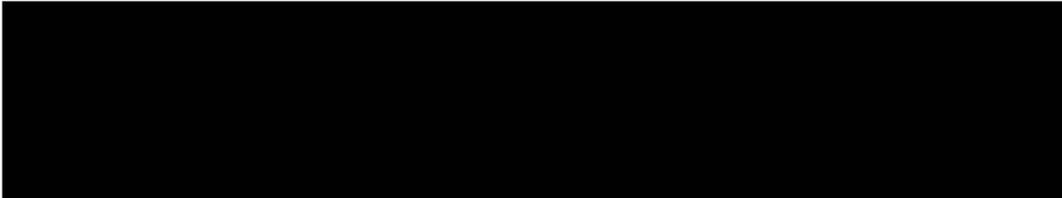
INRE:

Applicant:



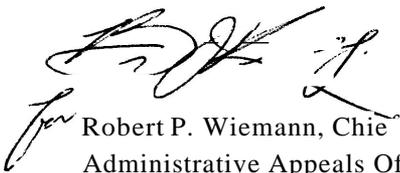
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: An initial application was denied by the Director, Nebraska Service Center (NSC). The re-registration application was then denied by the Director, California Service Center (CSC). The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The director's decision will be withdrawn and the appeal will be sustained.

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 his initial TPS application on May 4, 2001, under receipt number LIN 01 179 51930. The NSC director denied that application on August 5, 2002, due to abandonment because the applicant failed to appear for his scheduled fingerprint appointment.

The applicant filed a second FOTIn 1-821, Application for Temporary Protected Status, on November 12, 2002, under receipt number LIN 03 049 51858. The NSC director denied that application on May 29, 2003, because the applicant failed to establish his eligibility for TPS late registration. The NSC director noted in his decision that the applicant met the requirements of continuous residence and continuous physical presence in the United States during the requisite time periods. On July 1, 2003, the applicant filed an appeal which was remanded to the NSC director on February 15, 2005.

On September 12, 2003, the applicant filed a third application for TPS under receipt number LIN 03 27450274. The NSC director denied the application on January 16, 2004, because the applicant failed to establish his eligibility for TPS late registration. The NSC director also found that the applicant did not establish his qualifying continuous residence in the United States. The applicant filed an appeal on February 11, 2004, which was dismissed by the AAO on June 29, 2005.

The applicant filed the current FOTIn 1-821, Application for Temporary Protected Status, as a re-registration on February 24, 2005. The CSC director denied the current application on August 16, 2005, because the applicant's prior TPS application had been denied and the applicant was not eligible to re-register for TPS.

On appeal, the applicant asserts his eligibility for TPS and submits 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 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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence 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 by the Secretary of the Department of Homeland Security, with validity until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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).

A review of the record of proceedings reveals that the applicant was fingerprinted, and the most recent FBI criminal history response report dated April 29, 2006, was NON-IDENT.

Further, the record of proceedings contains sufficient evidence to establish the applicant's qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence since March 9, 2001, to the date of filing his application. Given that the record fails to reflect any other ineligibility issues, the CSC director's decision to deny the application 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 director's decision is withdrawn. The appeal is sustained and the application is approved.