

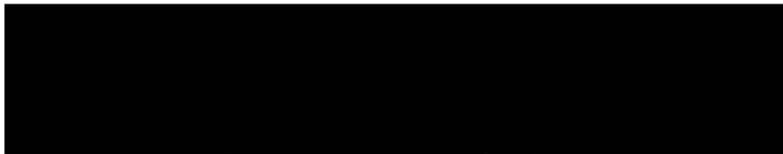
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U.S. Department of Homeland Security
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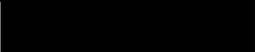


**U.S. Citizenship
and Immigration
Services**

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: **MAR 13 2008**

[EAC 01 245 57558]

[EAC 05 155 70778]

INRE:

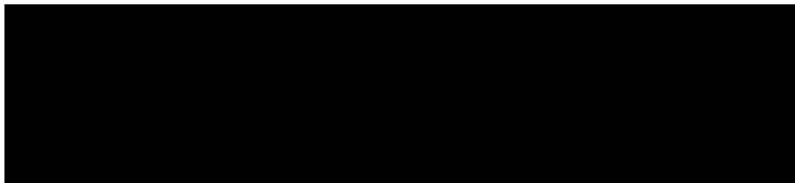
Applicant:



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

A handwritten signature in black ink, appearing to read "R. Wiemann".

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: Approval of the application was withdrawn, and an application for re-registration was denied, by the Director, Vermont Service Center (VSC). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained, and the decisions of the director will be withdrawn.

The applicant is a citizen of EI Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew approval of the applicant's TPS because the applicant departed the United States without permission after having been granted TPS. The director simultaneously denied an application for re-registration, based on the withdrawal of the initial approval.

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 who is a national of a foreign state is eligible for temporary protected status only if such alien establishes that he or she:

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 (t)(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.

The phrase *brief, casual, and innocent absence*, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Section 244(c)(3) of the Act, and the related regulations in 8 C.F.R. § 244.14, provide that the director may withdraw the status of an alien granted TPS at any time upon the occurrence of any of the following:

- (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;

- (2) The alien has not remained continuously present in the United States from the date the alien was first granted TPS;
- (3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of TPS.

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.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).

The record reflects that the applicant was ordered deported from the United States to El Salvador by an Immigration Judge on March 13, 1998. The applicant failed to depart as ordered, and, on August 6, 2001, filed an initial Form I-821, Application for Temporary Protected Status. The application was approved on January 14, 2002.

The applicant subsequently departed the United States. On November 29, 2004, he was apprehended and charged with reentering the United States after deportation.

On September 6, 2005, the director withdrew approval of the applicant's TPS and, in a separate decision, also denied the applicant's application for re-registration (EAC 05 155 70778), filed on February 6, 2005. The applicant, through counsel, filed the current appeal from those decisions on September 27, 2005.

On appeal, counsel asserts that the applicant's absence from the United States was a brief, casual, and innocent departure. In support of the appeal, counsel submits evidence that the applicant departed the United States on October 4, 2004, due to his mother's death in El Salvador.

In this case, based on the documentation contained in the record, it is concluded that the applicant's departure from the United States - for less than 60 days due to his mother's death in El Salvador - constitutes a brief, casual and innocent departure. Consequently, the director's decision to withdraw the applicant's TPS approval, and to deny his application for re-registration based on that decision, will be withdrawn. There are no other known grounds of ineligibility; therefore, the applicant remains eligible for TPS, and his application for re-registration 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 decisions of the director, dated September 6, 2005, to withdraw approval of the initial application and deny the application for re-

registration, are withdrawn. The applicant remains eligible for TPS, and his re-registration application is approved.