

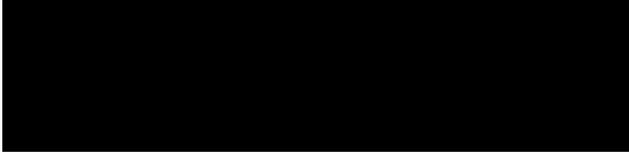
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FILE:



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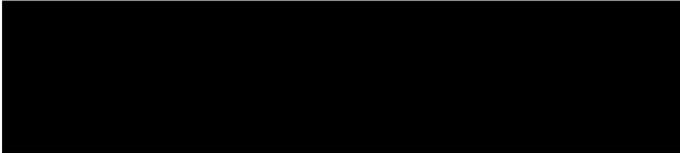
DATE: OCT 30 2006

[consolidated herein]

[EAC 02 047 57099]

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:

Self-represented

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. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

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 director denied the application because the applicant had failed to establish that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence.

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 September 9, 2007, 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 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 shows that the applicant filed her TPS application on October 19, 2001. In a notice of intent to deny dated February 27, 2004, the applicant was requested to submit evidence establishing continuous residence and continuous physical presence in the United States during the requisite period. In response, the applicant submitted:

1. A notarized letter dated March 16, 2004, from [REDACTED] indicating that she has known the applicant since Fall 2000, and that shortly thereafter, she had a series of cerebral strokes that caused her to be dependant in every area of her life. She stated that on December 12, 2000, the applicant became her "Personal Care Attendant" and remains so to the present. She added that the applicant helps her with personal hygiene, mobility, household routines, doctors' appointments, shopping, and transportation on a daily basis.
2. A letter dated March 19, 2004, from [REDACTED] indicating that the applicant has been a friend and an employee at his business, [REDACTED]

The director determined that the evidence furnished was insufficient because it did not adequately address the relevant time period, and denied the application on August 13, 2004.

On appeal, the applicant states that she is submitting additional supporting evidence and requests that CIS accept the evidence, review and approve her TPS application, and issue employment authorization so that she could reside and work legally in this country. She submits:

3. A copy of a letter dated September 2, 2004, addressed to the applicant from the International Coordinator Refund Department, Travelers Express Company, Inc., Lakewood, Colorado,

with an attachment, a MoneyGram Transaction History report, for transactions made by the applicant (an average of twice weekly) from January 3, 2001 through August 2, 2004, inclusive.

The evidence furnished by the applicant on appeal, in conjunction with other evidence included 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(a) and (b). Therefore, these findings of the director will be withdrawn.

The record of proceeding, however, contains a Warrant of Removal/Deportation, Form I-205, issued on January 19, 2000, in Houston, Texas, based on a final order of removal by an Immigration Judge on January 18, 2000. On March 17, 2000, the applicant was removed from the United States to El Salvador. The applicant indicted on her TPS application that she entered the United States without inspection on September 21, 2000.

Section 212(a)(9)(A)(i) of the Act states, in part:

Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal is inadmissible.

Section 244(c)(2)(A)(ii) of the Act and the related 8 C.F.R. § 244.3(b) state, in part:

Except as provided in paragraph (c) of this section, the Service [now, Citizenship and Immigration Services] may waive any other provision of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601 (Application for Waiver of Grounds of Excludability).

The applicant is inadmissible to the United States, pursuant to section 212(a)(9)(A)(i) of the Act, for having reentered the United States within five years of her removal from the United States based on a final order of removal by an Immigration Judge, and without the prior consent of the Attorney General. Section 212(a)(9)(A)(iii).

However, as provided in 8 C.F.R. § 244.3(b), the case will be remanded so that the director shall provide the applicant the opportunity to file a Form I-601 waiver, and shall fully adjudicate the Form I-601 and the Form I-821. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. An adverse decision on the waiver application may be appealed to the AAO.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.