



U.S. Citizenship
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Services

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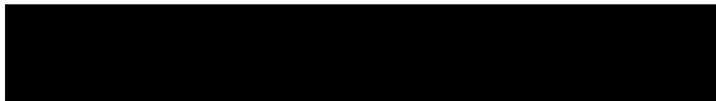
OFFICE: CALIFORNIA SERVICE CENTER

DATE: APR 23 2007

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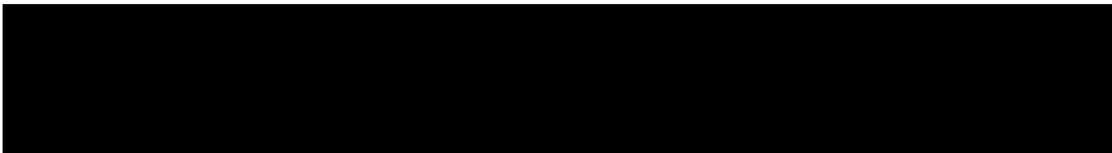
Applicant:



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.

for 
Robert P. Wiemann, 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 case will be remanded to the director for further action.

The applicant claims to be 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 register in a timely manner.”

On appeal, counsel submits a statement and additional evidence.

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 September 9, 2007, 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 November 22, 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.F.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.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 director noted that the applicant applied for asylum on August 21, 1996, that the asylum application was denied due to abandonment based on the applicant's failure to appear for a scheduled interview, and the applicant failed to file a TPS application within a 60-day period immediately following the termination/denial of the asylum. The director, therefore, determined that the applicant had failed to establish that she was eligible for late registration and denied the application on August 4, 2006.

On appeal, counsel asserts that the applicant's asylum case is still pending. Counsel further asserts that the applicant attended a scheduled asylum interview on July 25, 2006, but that she was told to return because the "Anaheim office was understaffed on that day."

A review of the record of proceeding indicates that on May 20, 1993, the applicant filed Form I-589, Request for Asylum in the United States. On August 23, 1995, the applicant was requested to appear for a scheduled interview on September 12, 1995. The applicant failed to appear; therefore, the case was administratively closed on December 11, 1995. On October 15, 1996, the case was administratively reopened and the applicant was again requested to appear for a scheduled interview on October 25, 1996. The applicant failed to appear; therefore, the case was administratively closed on November 12, 1996. The case was administratively reopened on February 4, 1998. On August 10, 2004, the applicant was requested to appear for a scheduled interview on August 31, 2004. Again, the applicant failed to appear. A letter, dated October 23, 2004, from the Director, Los Angeles Asylum Office, was served the applicant advising her that based on her failure to

appear for interview and failure to provide good cause for her failure to appear, her application for Asylum and Withholding of Removal was denied due to abandonment. On November 22, 2004, the applicant's former counsel responded to the letter from the Asylum Office and stated that the applicant never received the notice for her asylum interview. The case was administratively reopened on April 9, 2005. On July 10, 2006, the applicant was again requested to appear for a scheduled interview on July 25, 2006. The applicant appeared for that interview; however, the outcome of that interview is not reflected in the record.

The record, as presently constituted, indicates that the applicant's asylum application was pending at the time the applicant filed the TPS application on November 22, 2005. Accordingly, the applicant has established that she has met the criteria for late initial registration described in 8 C.F.R. § 244.2(f)(2)(ii). Therefore, this finding of the director will be withdrawn.

However, the evidence contained in the record of proceeding is insufficient to establish the applicant's qualifying continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). It is noted that documentation prior to May 2002 is minimal, some consisting of generic receipts and some without the applicant's name.

Therefore, the case will be remanded to the director for further adjudication of the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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 case is remanded for appropriate action consistent with the above discussion and entry of a new decision.