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U.S. Citizenship
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DEC 06 2007

FILE:

OFFICE: California Service Center

DATE:

[WAC 05 131 78688 –
as it relates to WAC 01 167 53238
and LIN 03 094 50395]

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

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center (CSC). A second application was denied by the Director, Nebraska Service Center (NSC), and dismissed on appeal before the Administrative Appeals Office (AAO). A subsequent application for re-registration was denied by the CSC Director and is currently on appeal before the AAO. The first two applications will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO), and approved. The appeal of the re-registration application will be sustained, and the application approved.

The applicant is a national 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 CSC Director denied the current application on the ground that since the applicant's initial application for TPS had been denied, she was ineligible to re-register for TPS under 8 C.F.R. § 244.17(a).

On appeal the applicant reiterates that she is eligible for TPS and submits supporting 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 designated by the Attorney General 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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. 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 record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status, at the California Service Center [WAC 01 167 53238] on March 29, 2001. On December 9, 2002, the CSC Director denied the application on the ground of abandonment. In his Notice of Decision, the director indicated that the CSC had twice sent the applicant a request for evidence (RFE) with a 12-week response time – on February 27, 2002, and June 28, 2002 – and that because the applicant failed to respond to either RFE, the TPS application was considered abandoned and denied in accordance with the regulation at 8 C.F.R. § 103.2(b)(13).

The applicant's address on the Form I-821 that she filed in March 2001 was [REDACTED] San Pedro, California 90731. The two RFEs issued by the CSC in February and June 2002 were sent to that address, as was the director's Notice of Decision in December 2002. The record clearly shows, however, that the applicant moved to Nebraska in 2002, prior to the issuance of the second RFE. On May 22, 2002, the Omaha District Office of the Immigration and Naturalization Service (now Citizenship and Immigration Services, or CIS) received a change of address form from the applicant that identified her new address as [REDACTED]

Nebraska 68701. Thus, the Service had notice of the applicant's change of address for more than a month before the second RFE was issued on June 28, 2002, and more than six months before the denial decision was issued on December 9, 2002.

The regulation at 8 C.F.R. § 244.9(c) – "*Failure to timely respond*" – provides as follows:

Failure to timely respond to a request for information . . . without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. *Such failure shall be excused if the request for information . . . was not mailed to the applicant's most recent address provided to the Service.* [Emphasis added.]

In accordance with the foregoing regulation, the applicant's failure to respond to the CSC's second request for evidence in June 2002 shall not be considered as an abandonment of her initial application because the RFE was not mailed to the most recent address the applicant had provided to the Service.

On January 28, 2003, the applicant filed a TPS application [LIN 03 094 50395] at the Nebraska Service Center (NSC).¹ Though she identified it on the Form I-821 as an application to re-register for TPS, the NSC Director treated it as an initial TPS application and issued a decision on May 22, 2003, denying the application on the grounds that the evidence of record failed to establish the applicant's continuous residence in the United States since February 13, 2001, her continuous physical presence in the United States since March 9, 2001, and that she was eligible for late initial TPS registration. The applicant filed an appeal and submitted additional documentation. On April 15, 2004, the AAO, after determining that the applicant had submitted sufficient evidence to establish her qualifying residence and physical presence in the United States, dismissed the appeal on the ground that the applicant had submitted no evidence that she was eligible for late registration under any of the qualifying criteria enumerated at 8 C.F.R. § 244.2(f)(2).

After moving back to California, the applicant filed another TPS application at the California Service Center [WAC 05 131 78688] on February 8, 2005. Identified as a re-registration application, it was denied by the CSC Director on August 16, 2005, on the ground that the applicant's initial TPS application was denied, making her ineligible, under 8 C.F.R. § 244.17(a), to re-register for TPS.

On appeal, the applicant submits a certified photocopy of her birth certificate, issued by El Salvadoran authorities in July 1994, stating that she was born in San Vicente, El Salvador, on October 23, 1952; and photocopies of the following additional documentation: a utility bill issued to the applicant by the City of Los Angeles Municipal Services on December 12, 2000; bills issued to the applicant by the Southern California Gas Company on January 24, 2001, February 23, 2001, and March 23, 2001; an employment verification letter from IBP, Inc., of Dakota City, Nebraska, dated January 14, 2003, confirming that the applicant had worked for the company since January 30, 2002; Internal Revenue Service Forms W-2, Wage and Tax Statements, issued to the applicant by IBP, Inc., for 2002, and by Tyson Fresh Meats, Inc., of Springdale, Arkansas for 2003; the applicant's federal income tax returns for the years 2002 and 2003; a money transfer

¹ The applicant filed additional TPS re-registration applications at the NSC on October 15, 2002, and August 5, 2003. No decisions were rendered on either of those applications.

statement from the applicant in Norfolk, Nebraska, to a recipient in San Vicente, El Salvador, dated July 9, 2003; a notice to the applicant from the Nebraska Service Center, dated September 18, 2003; and bank account statements issued to the applicant in San Pedro, California in July and August 2005.

Based on the foregoing submissions, and those from earlier in the proceedings – in particular the documentation listed in the AAO’s decision of April 15, 2004, on the appeal of the prior TPS application [LIN 03 094 50395] – the applicant has established her El Salvadoran nationality, her continuous physical presence in the United States since March 9, 2001, and her continuous residence in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(a), (b) and (c). Since the applicant filed her initial TPS application during the initial registration period for El Salvadorans, which was improperly denied on the ground of abandonment after the CSC failed to take notice of the applicant’s change of address, the AAO also determines that the applicant need not establish her eligibility for late TPS registration under 8 C.F.R. § 244.2(f)(2) and (g). The record does not indicate any other grounds of ineligibility for TPS.

Based on the entire record, the applicant has established her eligibility for TPS. Accordingly, the initial application, timely filed during the initial registration period, will be reopened *sua sponte* by the AAO. The CSC Director’s denial of that application on December 9, 2002, will be withdrawn and the application will be approved. The applicant’s second TPS application will likewise be reopened *sua sponte* by the AAO. The NSC Director’s denial of May 22, 2003, and the AAO’s dismissal of the appeal on April 15, 2004, will be withdrawn, and the application will be approved. In addition, the CSC Director’s denial of the re-registration application on August 16, 2005, will be withdrawn, the appeal will be sustained, and that application will also 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 that burden.

ORDER: The initial application [WAC 01 167 543238] is reopened *sua sponte* and the director’s denial of that application is withdrawn. The second application [LIN 03 094 50395] is also reopened *sua sponte* and the director’s denial of that application is also withdrawn. In addition, the director’s denial of the re-registration application [WAC 05 154 77469] is withdrawn. The initial application, the second application, and the re-registration application are all approved. The appeal is sustained.