

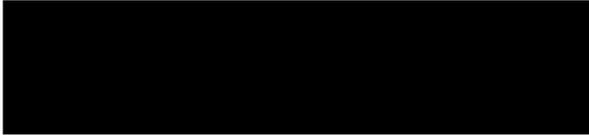


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

MI



FILE:



OFFICE: Vermont Service Center

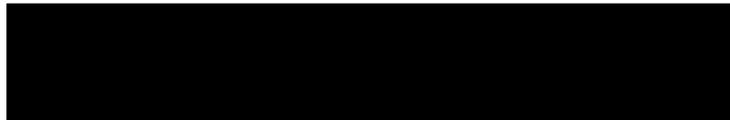
DATE: NOV 16 2007

- consolidated herein]

[EAC 06 228 72002]

IN RE:

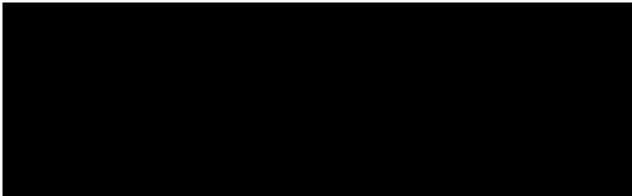
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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 (VSC). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be remanded to the director for further action and the entry of a new decision.

The applicant is a 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 on the grounds that the applicant failed to establish that she had continuously resided in the United States since February 13, 2001, and was continuously physically present in the United States from March 9, 2001, to the date she filed for TPS, and failed to submit sufficient evidence of her nationality and identity.

On appeal counsel submits a brief and some 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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The applicant filed her initial Form I-821, Application for Temporary Protected Status, on May 16, 2006 – more than three and a half years after the close of the initial registration period for El Salvadoran nationals.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions described in 8 C.F.R. § 244.2(f)(2) above, and filed her TPS application within 60 days of the expiration of that condition, as prescribed in 8 C.F.R. § 244.2(g).

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. *See* 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. *See* 8 C.F.R. § 244.9(b).

The record indicates that the applicant was born in El Salvador on April 8, 1982, and entered the United States without inspection on December 28, 1990, with her mother, [REDACTED] and her sister, [REDACTED]. The family was placed in deportation proceedings and on June 21, 1991, an Immigration Judge in Los Angeles, California, issued an order granting the family members voluntary departure on or before February 28, 1992, in lieu of deportation. The applicant and her other family members did not depart the United States as ordered. On June 10, 1992, the INS (now CIS) District Director in Los Angeles issued a Warrant of Deportation for the applicant, and scheduled her deportation for July 13, 1992. The applicant did not appear for deportation at the appointed time and place.

Meanwhile, on October 4, 1991, the applicant's mother filed a Request for Asylum in the United States (Form I-589), listing the applicant and her sister as living with her in Los Angeles and including them in the application. On March 10, 2006, the asylum request was denied by the Director, Los Angeles Asylum Office.

On October 9, 2001, the applicant filed an Application for Suspension of Deportation or Special Rule Cancellation of Removal (Form I-881) with the Asylum Office in Anaheim, California. On February 15, 2005, the Director, Los Angeles Asylum Office, dismissed the application after finding that the applicant was not a member of the ABC class (beneficiaries of a settlement agreement in the court case of American Baptist

Churches v. Thornburgh) and was therefore ineligible for ABC benefits such as protection from removal from the United States prior to a decision by an asylum officer.

After the applicant filed for TPS on May 12, 2006, the VSC Director issued a notice of intent to deny (NOID) on December 13, 2006, requesting the submission of evidence that the applicant was eligible for late initial registration and that she met the continuous residence and continuous physical presence requirements for El Salvadoran nationals, as well as a word-for-word translation of her birth certificate and the biographical pages of her passport or her national identity document to establish her El Salvadoran nationality. The applicant responded with additional documentation on January 19, 2007, after which the director issued a decision on April 2, 2007, denying the application for TPS. The director found that evidence of record established the applicant's eligibility for late initial registration under 8 C.F.R. § 244.2(f)(2)(i) "based on your voluntary departure order," but denied the application on the grounds that the applicant had not submitted the requested translation of her birth certificate or a national identity document from El Salvador, and had not established her continuous residence and continuous physical presence in the United States for the requisite time periods starting in February and March 2001, in accordance with section 244(c)(1)(A)(i) and (ii) of the Act.

The applicant filed a timely appeal, and has submitted additional documentation including a word-for-word translation of her El Salvadoran birth certificate; a photocopy of the biographical page of her El Salvadoran passport (with a photo identification); her academic transcripts from Los Angeles City College during the time period from January 15, 2001, to June 4, 2007; and Verizon Wireless bills mailed to the applicant at her address in Los Angeles from October 2004 to May 2007. The evidence filed on appeal, together with the previously submitted documentation of record, establishes the applicant's identity and nationality, in accordance with the evidentiary requirements of 8 C.F.R. § 244.9(a)(1), as well as her continuous physical presence in the United States from March 9, 2001, to the date she filed her TPS application in May 2006, and her continuous residence in the United States since February 13, 2001, in accordance with the evidentiary requirements of 8 C.F.R. § 244.9(a)(2). Thus, the applicant has overcome the grounds for denial cited in the director's decision.

A review of the record, however, does not appear to support the director's finding that the applicant is eligible for late initial registration under 8 C.F.R. § 244.2(f)(2)(i) based on a voluntary departure order. While the applicant, along with her mother and her sister, was granted voluntary departure by an Immigration Judge in Los Angeles on June 21, 1991, the order stated that the applicant must depart the United States no later than February 28, 1992, and that "if respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings" and deportation to El Salvador enforced. That is what happened as the applicant did not voluntarily depart the United States and the District Director in Los Angeles issued a Warrant of Deportation on June 10, 1992. Thus, the applicant's voluntary departure order from June 21, 1991, was no longer in force during the initial registration period for TPS applicants from El Salvador in 2001-02, as required for the applicant to be eligible for late initial registration under 8 C.F.R. § 244.2(f)(2)(i).

The case will be remanded to the VSC director for further consideration as to whether the applicant is eligible for late initial registration under one or more of the conditions enumerated at 8 C.F.R. § 244.2(f)(2), and for the issuance of a new decision.

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

ORDER: The case is remanded to the director for further action consistent with the above and the entry of a new decision.