

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1



FILE:



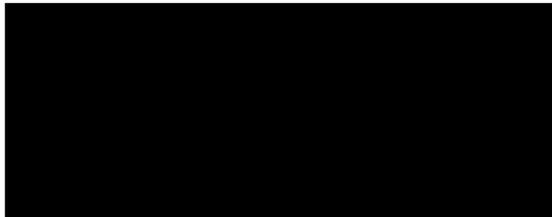
[EAC 05 288 70188]

Office: VERMONT SERVICE CENTER

Date: **NOV 29 2007**

IN RE:

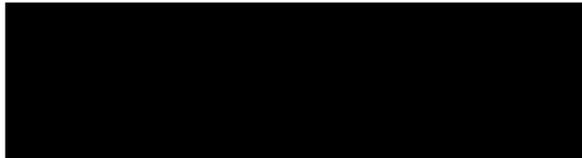
Applicant:



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.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

for 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 on appeal. The appeal will be sustained and the application will be approved.

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 her qualifying residence and physical presence in the United States during the requisite time periods.

On appeal, counsel asserts the applicant's claim of eligibility for TPS.

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.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. A subsequent extension of the TPS designation has been granted with validity until March 9, 2009, 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 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 requested the applicant submit evidence establishing her qualifying residence and physical presence in the United States. The applicant, in response, provided the following documentation:

1. Copies of Chevy Chase bank checks dated December of 2001, January, February, and March of 2002;
2. Copies of Form W-2, Wage and Tax Statement for the 2001 tax year; and,
3. Copies of the applicant's Employment Authorization notice and cards covering the periods from April 1999 through May of 2005.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on May 25, 2006.

On appeal, counsel states that the applicant has been present in the United States since 1992 and has submitted sufficient evidence to establish continuous residence and continuous physical presence. The applicant submits the following documentation:

4. A copy of the applicant's El Salvadoran passport issued to her in the United States on March 3, 1994;
5. Copies of Chevy Chase Bank account statements dated November and December of 2000, and January through March of 2001;
6. Copies of Chevy Chase Bank checks dated March, April, September, and November of 2000, and March and May of 2001;
7. A letter from Chevy Chase Bank in which it is stated that the applicant opened a joint savings account on October 22, 1999;
8. A letter from the owner of Dryclean Plus dated October 18, 2000, in which he stated that the applicant has been employed by the company since 1994;
9. A copy of the applicant's Social Security Statement, Earnings Record for the years 1999 through 2004; and,
10. A copy of the applicant's Form 1040, U.S. Individual Income Tax Return for the 2000 tax year.

The applicant has submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application for this reason will be withdrawn.

Since the applicant appears to have overcome the grounds for the denial of her initial application for TPS, that decision has been withdrawn. The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any other grounds that would bar the applicant from receiving TPS. Therefore, the initial application will be approved.

An alien applying for TPS 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 this burden.

ORDER: The director's denial of the initial application is withdrawn, and the application is approved.