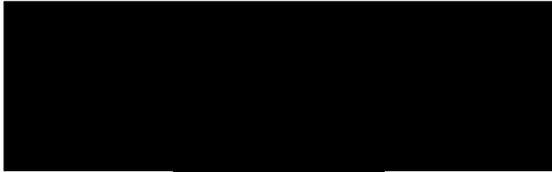




U.S. Citizenship
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Services

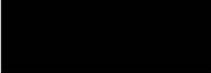
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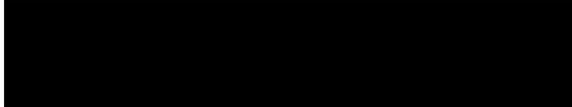
OFFICE: NEBRASKA SERVICE CENTER

DATE: **OCT 05 2007**

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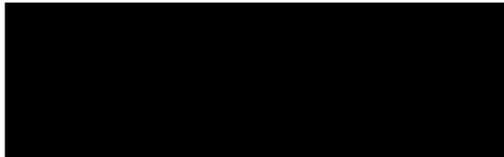
Applicant:



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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 respond to a request for additional evidence.

On appeal, the applicant reiterates her claim of eligibility for TPS. She submits additional evidence to support her claim.

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 13, 2002.

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 record reveals that the applicant did file an initial application for TPS on June 28, 2002, under receipt number LIN-02-232-51926. That application was denied due to abandonment on February 3, 2003, because the applicant had failed to respond to a request dated September 3, 2002, to submit evidence of her nationality and identity, and evidence of continuous residence and continuous physical presence in the United States during the qualifying periods. The applicant attempted to file a motion to reopen during the requisite timeframe; however, the motion was rejected and returned to the applicant on March 4, 2003, because she had not signed the form. There is no indication that the applicant returned the motion to the Service Center.

The applicant subsequently filed the current TPS application on November 13, 2002, and indicated that she was re-registering for TPS. As the initial application was denied on February 3, 2003, the director treated the submission as a new application.

The director noted that no evidence was submitted with the TPS application; therefore, a notice of intent to deny was issued on February 19, 2003, providing the applicant the opportunity to submit: (1) a photo identification document; (2) a copy of her birth certificate or passport; (3) a Form FD-258 (fingerprint card); (4) evidence to establish that she had entered the United States on or before February 13, 2001; (5) evidence to

establish that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001; and (6) a Form I-765, Application for Employment Authorization, and a filing fee, if applicable. The applicant failed to respond; therefore, the director denied the application on April 10, 2003. The director also noted that the application was filed after the initial registration period from March 9, 2001 through September 9, 2002.

On appeal, the applicant submits documentation requested by the director. She also included copies of State of Utah school identification cards for school years 1998 through 2003, inclusive, with copies of school transcripts and a letter from the Granite [Utah] School District; a copy of State of Utah Identification Card issued on August 13, 2001; evidence that Form FD-258 was completed at "INS/ASC" on October 4, 2002; and a copy of Form I-765.

The record of proceeding contains Form I-213, Record of Deportable/Inadmissible Alien, indicating that on May 2, 1998, nine subjects, including the applicant and her mother, were apprehended near Derby Line, Vermont, while attempting to circumvent inspection by doing a u-turn and ignoring Service agents instructions. The subjects claimed they had gone to a family funeral in Canada two weeks ago and are now returning to Utah where they reside. Form I-862, Notice to Appear, was issued on May 2, 1998, in Swanton, Vermont. In removal proceedings held on April 19, 2000, in Denver, Colorado, the Immigration Judge (IJ) ordered the applicant removed from the United States. On April 28, 2000, the applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On June 26, 2001, the BIA administratively closed proceedings when it was determined that the applicant may be eligible to apply for TPS.

As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2)(ii), in this case, after the administrative closure of removal proceedings on June 26, 2001, to file an application for late registration under TPS. The TPS application, in this case, was not filed until November 13, 2002; therefore, the applicant does not fall under the provisions of 8 C.F.R. § 244.2(f)(2)(ii). However, it is noted that the applicant's mother, [REDACTED], was granted TPS on February 3, 2003. Accordingly, the applicant is eligible to apply for late registration.

Accordingly, the applicant has established that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(iv). Additionally, the evidence contained 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(b) and (c).

Therefore, the appeal will be sustained and the application will 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 this burden.

ORDER: The appeal is sustained and the application is approved.