



**U.S. Citizenship
and Immigration
Services**

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FILE:



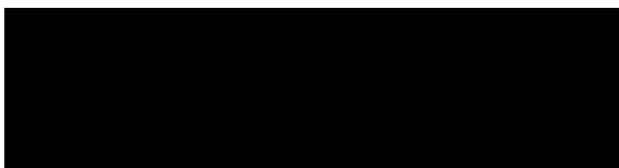
Office: VERMONT SERVICE CENTER

Date: **APR 17 2008**

[EAC 0307450921, as it pertains to EAC 01 18453548]

INRE:

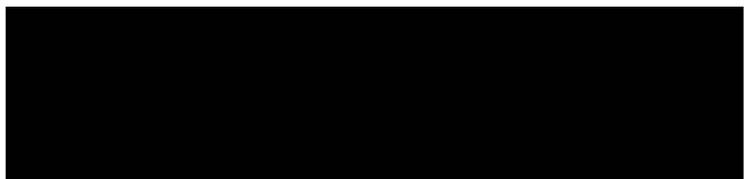
Applicant:



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: An initial application was denied by the Director, Vermont Service Center (VSC). The re-registration application was then denied by the director. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The director's decision will be withdrawn and the appeal will be sustained.

The applicant is a native and citizen of El Salvador who filed an initial TPS application on April 20, 2001, under EAC 01 18453548. On December 3, 2001, the director requested the applicant to submit the final court dispositions of the charges relating to his criminal record. The director determined that the record did not contain a response from the applicant; therefore, the director denied that application on July 18, 2002, due to abandonment.

The applicant filed the current TPS re-registration application on October 15, 2002. The director denied that application on September 3, 2003, because the applicant failed to establish his eligibility for TPS late registration.

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

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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.

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 entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence 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 by the Secretary of the Department of Homeland Security, 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 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 reflects that the applicant was arrested on November 8, 1997, by the Boston Police Department for "Rape and Abuse of a Child Under 16," and "Kidnapping."

A review of the record of proceedings reflects that on December 3, 2001, the director requested the applicant to submit the final court dispositions regarding his past arrests. The director indicated in his request that a response must be received by February 28, 2002. The applicant did not respond to the request until April 12, 2002. In response, the applicant provided copies of the final court dispositions from the Commonwealth of Massachusetts, Criminal History Systems Board. Furthermore, according to the final court disposition, the charges against the applicant were dismissed on March 2, 1998, and the case was closed on October 15, 1999.

The director denied the initial application on July 18, 2002, due to abandonment because the applicant did not respond within the prescribed time period. However, according to the record, the applicant responded to the

request before the director's decision to deny the application. Therefore, the director's decision regarding the denial of the initial application due to abandonment will be withdrawn.

Additionally, a review of the record of proceedings reflects that the applicant submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. As stated previously, according to the final court disposition, the charges against the applicant were dismissed on March 2, 1998, and the case was closed on October 15, 1999. Given that the record fails to reflect any other ineligibility issues, the director's decision to deny the current application will be withdrawn 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.