

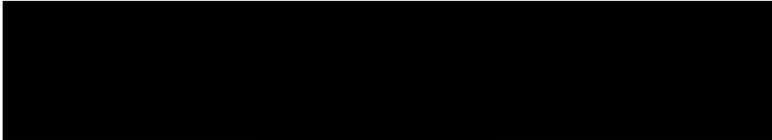
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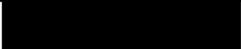
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 04 2008

[EAC 06 325 74465 –
as it relates to
EAC 02 261 51134 and EAC 04 252 50026]]

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 office that originally decided your case. Any further inquiry must be made to that office.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Vermont Service Center (VSC). A re-registration application was also denied by the VSC Director, and an appeal from that decision was dismissed by the Chief, Administrative Appeals Office (AAO). Both applications will be reopened, *sua sponte*, by the Chief, AAO. A subsequent application was also denied by the VSC director, and is currently on appeal before the AAO. The appeal will be sustained, and the applications approved.

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 record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status, on August 9, 2002, during the initial registration period (EAC 02 261 51134 relates). That application was denied due to abandonment on April 1, 2003, after the applicant failed to appear for a required fingerprinting. Since the application was denied due to abandonment there was no appeal available; however, the applicant was advised that she could file a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a second Form I-821 on September 7, 2004, and indicated that she was re-registering for TPS or renewing her temporary treatment benefits (EAC 04 252 50026 relates). That application was denied as an initial application on January 14, 2005, because the applicant failed to establish her eligibility for late registration, and her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. An appeal from that decision, filed on February 14, 2005, was dismissed by the Chief, AAO, on February 2, 2006. While finding that the evidence of record established the applicant's continuous physical presence in the United States from March 9, 2001, and her continuous residence in the United States since February 13, 2001, in accordance with section 244(c)(1)(A)(i) and (ii) of the Act, the Chief, AAO, determined that the applicant failed to establish her eligibility for late initial registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2).

The applicant filed this Form I-821 on August 6, 2007, and indicated that it was an initial TPS application. The VSC director denied the application on February 13, 2007, after determining that the applicant failed to establish her eligibility for late registration, and her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant timely filed her current appeal from that decision on February 26, 2007.

The regulations give the AAO (as well as the service centers and district offices) the authority to reopen a proceeding or reconsider a decision *sua sponte* if the circumstances so warrant. *See* 8 C.F.R. § 103.5(a)(5). The AAO notes that the applicant's initial Form I-821 was filed during the initial registration period for TPS applicants from El Salvador; that the ground for denying the initial application has been overcome as the applicant has now been fingerprinted and there is no record on the applicant according to the Federal Bureau of Investigation (FBI); and the applicant meets the other criteria for TPS eligibility set forth in section 244(c) of the Act. Accordingly the AAO will reopen the initial application *sua sponte*, withdraw the VSC Director's decision, and approve the application. The applicant's re-registration application with the VSC will likewise be reopened *sua sponte*, the director's decision withdrawn, and the application approved. In addition, the VSC Director's

denial of the current TPS application will be withdrawn. The appeal will be sustained, and the application 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. Here, the applicant has met that burden.

ORDER: The initial application [EAC 02 261 51134] and the re-registration application [EAC 04 252 50026] are reopened, *sua sponte*, the VSC Director's decisions are withdrawn, and the applications are approved.

The appeal of the VSC Director's decision denying the current application [EAC 06 758 333] is sustained. The application is approved.