

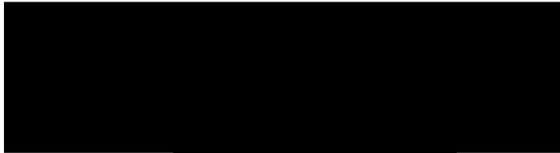
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U.S. Citizenship
and Immigration
Services

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FILE:

[EAC 04 116 51680]
[SRC 01 260 55056]

Office: VERMONT SERVICE CENTER

Date: FEB 25 2008

IN RE:

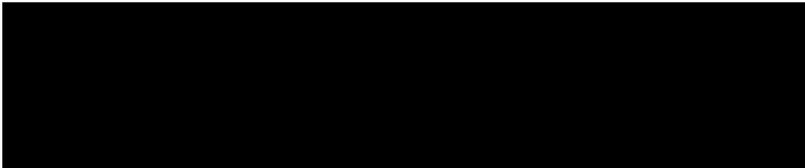
Applicant:



APPLICATION:

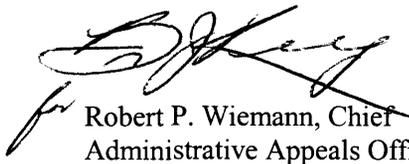
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (CSC), denied the initial application. The director, Vermont Service Center, VSC, denied a subsequent application, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador who seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director, VSC, denied the application because the applicant failed to establish that she qualified for late initial registration. The director also denied the application because the applicant failed to establish her qualifying continuous residence and continuous physical presence in the United States.

On appeal, the applicant asserts that she is eligible for TPS and submits 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 as 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 section 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 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 Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 March 9, 2009, upon the applicant's re-registration during the requisite time period.

The burden of proof is on 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 filed a TPS application on August 27, 2001 (SRC 01 260 55056) – during the initial registration period for Salvadorans. In support of her application, the applicant submitted various documents to establish her identity, nationality, and, continuous residence and continuous physical presence, including a North Carolina identification card issued on August 7, 2001; a pay stub from the Daly Seven corporation, for the pay period September 18, 2000, to October 1, 2000; her national identification document; and her birth certificate, with translation. The address on her North Carolina identification card and her TPS application indicated residence in Durham, North Carolina.

On September 24, 2002, the applicant filed an application for re-registration, listing the same address she listed on her initial application.

On January 15, 2003, the director, SRC, mailed a Notice of Intent to Deny (NOID) and Request For Evidence (RFE), to the attorney who helped the applicant prepare her initial application, [REDACTED]. The applicant did not respond.

On April 9, 2003, the director, SRC, deemed the application abandoned, due to the applicant's failure to respond to the RFE. The denial notice was mailed to [REDACTED]. The denial notice indicated that a denial for abandonment could not be appealed, but that applicant could file a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion.

On March 10, 2004, the applicant filed the current application (EAC 04 116 51680) with the director, VSC. The director accepted it under the late initial filing provisions of 8 C.F.R. 244.2(f).

On April 26, 2004, the director requested that the applicant submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director also requested that the applicant submit evidence establishing her qualifying continuous residence and continuous physical presence. In response, the applicant submitted five additional pay stubs from the Daly Seven corporation, for pay periods January 22, 2001, to February 4, 2001, through April 2, 2001, to April 15, 2001.

On, December 29, 2004, the director, VSC, denied the application because the applicant failed to establish that she qualified for late initial registration. The director also denied the application because the applicant failed to establish her qualifying continuous residence and continuous physical presence in the United States.

On appeal, the applicant asserts that she is eligible for TPS and submits additional documentation, including seven pay stubs from the Daly Seven corporation for pay periods September 18, 2000, to October 1, 2000, through March 19, 2001, to April 1, 2001.

The North Carolina identification card and the pay stubs show residence and physical presence immediately prior to and during the initial registration period. These documents indicate residence and physical presence in Durham, North Carolina, and establish that the applicant continuously resided in the United States since before February 13, 2001, through the date of filing of her initial application, on August 27, 2001. Consequently, the applicant has submitted sufficient evidence to establish that she has met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Accordingly, the director's decision to deny the application on these grounds will be withdrawn.

Regarding the issue of late initial registration, there is no indication in the record of proceeding that the director, TSC, mailed the applicant the January 15, 2003, NOID and RFE, or, the April 9, 2003, denial notice, only that the director sent these to the lawyer who helped the applicant prepare her TPS applications. If the applicant has satisfied the other requirements for TPS, the first application can be reopened *sua sponte*, in accordance with 8 C.F.R. 103.5(a)(5). The applicant has satisfied the requirements for establishing her continuous residence and continuance physical presence from the required dates in 2001 to the date of filing of her initial application. The applicant's national identification document establishes her identity and her Salvadoran nationality. The record also contains results from a recent fingerprint investigation of the applicant conducted by the Federal Bureau of Investigation (FBI) issued on April 2, 2007, indicating no criminal record that would bar the applicant from TPS eligibility. The applicant has satisfied all other requirements for TPS. Therefore, the initial application is reopened and 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 appeal is sustained. The initial application is reopened, *sua sponte*, and the application is approved.