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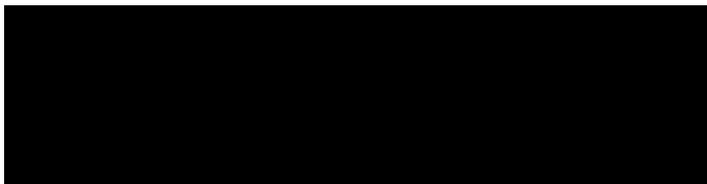
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



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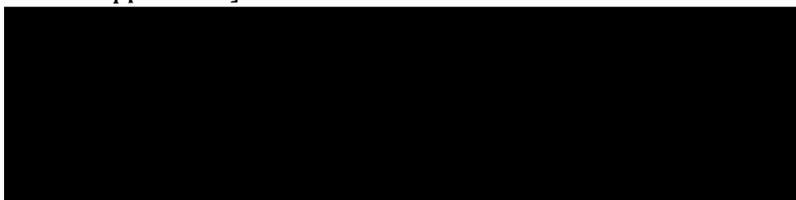
Office: VERMONT SERVICE CENTER

Date: FEB 25 2008

[EAC 02 112 51128 Appeal]
[EAC 02 112 51128 Application]

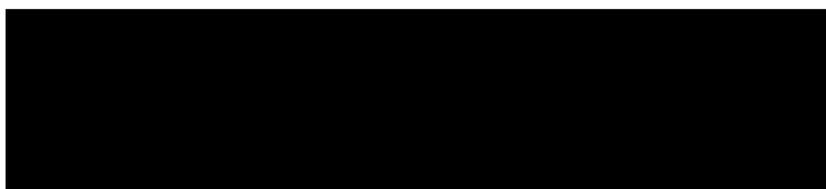
IN RE:

Applicant:



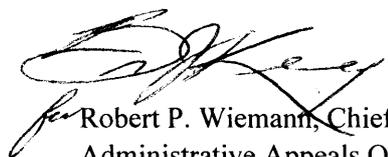
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont 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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal is sustained.

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 failed to establish she had continuously resided in the United States since February 13, 2001 and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits documentation to establish her continuous residence and continuous physical presence in the United States.

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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002.

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 applicant initially submitted the following evidence in an attempt to establish her qualifying continuous residence and physical presence in the United States:

1. A copy of her Republic of El Salvador passport issued by the General Consul of El Salvador in Washington, D.C., on June 29, 2000.

The record shows that the applicant filed this TPS application on February 7, 2002. On July 1, 2002, the applicant was provided the opportunity to submit evidence establishing continuous residence since February 13, 2001, and her continuous physical presence from March 9, 2001, to the date the application was filed. The director determined that the applicant failed to respond to the request and denied this application on June 11, 2003.

On appeal, the applicant states that she had not received "any letter" from the director and submits the following documentation:

2. A copy of her and her husband's IRS Form 1040EZ, U.S. Income Tax Return for Single and Joint Filers with No Dependents, for 2000.
3. A copy of her IRS Form W-2, Wage and Tax Statement from Coast Fresh Cuts in Maryland for 2000.
4. A copy of a medical bill dated October 19, 2001 for her husband from Rapid Recovery Inc. in Hyattsville, Maryland.
5. A copy of her pay slip from Up To Date Laundry Inc. for the pay period from September 24, 2000 to September 30, 2000 showing that accumulated net pay of \$2,474.26 had been earned for the year to date.
6. A copy of the applicant's membership card for The Evangelical Church Apostles and Prophets EPN: 2:20 in Washington, D.C. for 2001-2003.
7. A copy of an IRS Form 5564, Notice of Deficiency – Waiver, dated July 1, 2002 to the applicant and her spouse for the year ended December 31, 2000.
8. A copy of a "Rent Increase//Lease Renewal" form from Sawyer Property Management of Maryland, Inc. dated October 5, 2001 to the applicant and her husband providing rental options that they could select if they wished to continue to rent their property in Hyattsville, Maryland.

The record shows that the applicant entered the United States on or about January 28, 1995 and was apprehended by the Border Patrol. On March 27, 1995 an Immigration Judge in Phoenix, Arizona ordered her deported after she failed to appear for her immigration hearing. On April 28, 1995, the District Director in Tucson, Arizona issued a Warrant of Deportation in the applicant's behalf. On March 7, 2003 the applicant and her husband, a permanent resident, were required to appear for an interview concerning the Form I-130, Petition for Alien Relative, that he filed in her behalf. The petition was approved on March 18, 2003.

It is determined that the documentation submitted by the applicant is sufficient to establish that she satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status is withdrawn. 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. Here, the applicant has met this burden.

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