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**U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

[EAC 02 075 50866]
[WAC 05 216 85287]
[WAC 07 179 50545 - motion]

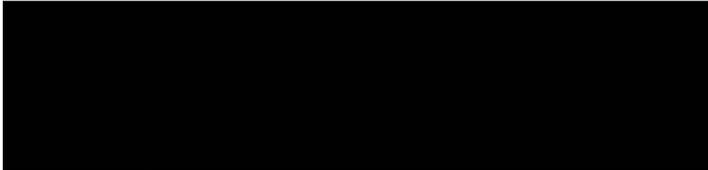
INRE:

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 California Service Center. 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, California Service Center (CSC). That re-registration denial was appealed and the appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a subsequent motion to reopen. The initial application will be reopened, *sua sponte*, by the Chief, AAO. The motion to reopen will be granted and the appeal will be 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 record reveals that the applicant filed a TPS application during the initial registration period on December 20, 2001, under receipt number EAC 02 07550866. The VSC director denied that application on May 12, 2003, due to abandonment because the applicant failed to appear for her scheduled fingerprint appointment.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, as a re-registration on March 4, 2005. The CSC director denied the application on July 26, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On August 29, 2005, counsel filed an appeal which was dismissed by the AAO on April 30, 2007. On May 31, 2007, counsel submitted a motion to reopen which is now before the AAO.

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 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 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).

On motion, counsel argues that the VSC director erroneously alleged that the applicant abandoned her initial application because she failed to appear for her scheduled fingerprint appointment. Counsel further states that the applicant did not appear for her scheduled fingerprint appointment because she did not receive the fingerprint appointment notification.

Counsel also provides additional documentation relating to the applicant's continuous residence and continuous physical presence in the United States during the requisite time periods. Counsel provides copies of the following additional evidence: birth certificates of the applicant's three children born on February 19, 1998, March 29, 1999, and May 14, 2003; the applicant's Internal Revenue Service (IRS) U.S. Individual Income Tax Returns and Form W-2, Wage and Tax Statement, for the years 1999 through 2004; and copies of the applicant's El Salvadoran personal identification card (Cedula).

A review of the record of proceedings reveals that the applicant subsequently was fingerprinted and the most recent FBI criminal history response reports dated June 2, 2005, and April 25, 2006, were NON-IDENT.

Further, the applicant has submitted sufficient evidence to establish her **qualifying** continuous residence in the United States since February 13, 2001, and her continuous physical presence since March 9, 2001, to the date of filing her application. Therefore, the director's decision will be withdrawn and the initial 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 VSC director's decision is withdrawn. The appeal is sustained and the applications are approved.