

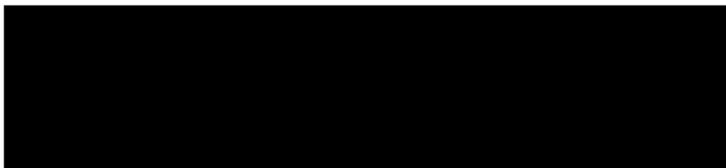


U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

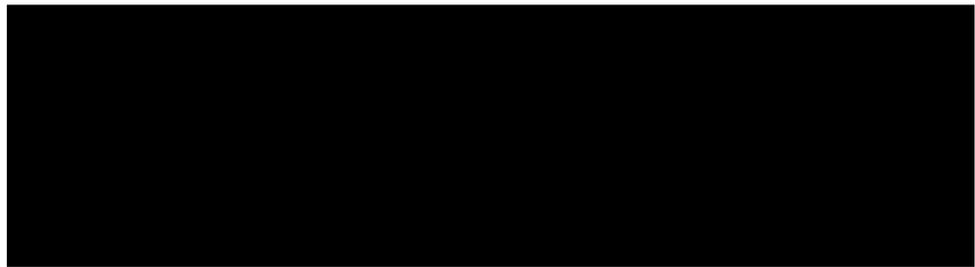
DATE: JAN 03 2008

[WAC 05 216 87480]

[WAC 06 186 50194 appeal]

IN RE:

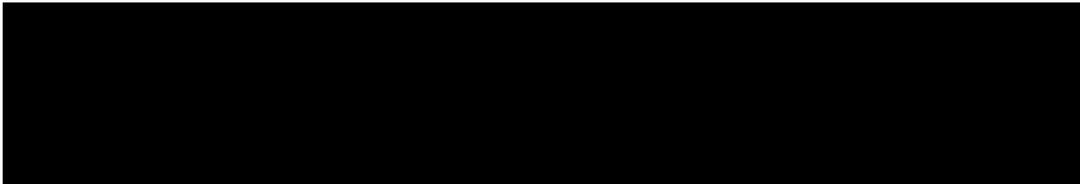
Applicant:



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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

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 determined that the applicant was not eligible for TPS because she filed her TPS application after the initial registration period for El Salvadorans had terminated.

On appeal, counsel asserts that the applicant is eligible for late registration under TPS because she had a pending adjustment of status application during the initial registration period and is still pending further review by the Board of Immigration Appeals.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial application on May 4, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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).

A review of the record indicates that on May 24, 1996, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, based on an approved Form I-130, Immigrant Petition for Relative, filed on behalf of the applicant by [REDACTED] on May 13, 1994. The Form I-485 application was denied by the District Director, Atlanta, Georgia, on March 11, 1998, because the applicant had failed to appear for a scheduled interview. The applicant was also served a Notice to Appear, Form I-862, on March 11, 1998, based on her entry into the United States without inspection at or near San Diego, California, on or about February 1991. The applicant was ordered removed to El Salvador *in absentia* by an Immigration Judge (IJ) on September 3, 1998.

A Judgment of Divorce was ordered by a judge in the Circuit Court of Mobile, Alabama, on October 1998, dissolving the marriage of the applicant with [REDACTED]. On September 2, 1999, the applicant married [REDACTED]. The applicant filed a Form I-485 based on an approved Form I-130 filed on behalf of the applicant by [REDACTED] on January 6, 2000. The Form I-485 application was denied by the Atlanta district director on January 31, 2003, after determining that the district director did not have any jurisdiction on

the adjustment of status application because the applicant had been ordered deported on September 3, 1998, and she had failed to depart from the United States. The applicant was advised that her application for adjustment of status, therefore, shall be made and considered only in proceedings before the Immigration Judge pursuant to 8 C.F.R. § 245.2(a).

On July 25, 2003, the applicant filed a motion to reopen the IJ's *in absentia* removal order. In that motion, the applicant, through counsel, asserts that she did not receive the notice to appear (NTA) at that hearing because she left her former address while fleeing from her abusive ex-husband, but that she did list her new address on her applications for employment authorization (Form I-765) filed approximately 10 months prior to the issuance of the NTA. She further asserts that she is entitled to have her *in absentia* removal proceedings rescinded based upon improper notice of removal proceedings and also to have them reopened so that she can adjust status based on her 4-year marriage to her United States citizen husband. The motion was denied by the IJ on August 12, 2003, and the applicant filed an appeal with the Board of Immigration Appeals (BIA) on November 19, 2003. The BIA affirmed, without opinion, the IJ's decision and dismissed the appeal on June 28, 2004. The applicant subsequently filed a Petition for Review with the United States Court of Appeals for the Eleventh Circuit. She asserts that although she submitted to the BIA a Motion to Consider New Evidence or to Remand, the BIA failed to render a decision; instead, the BIA summarily affirmed the IJ's decision without opinion and without addressing the new, material evidence that negated the primary factual finding underlying the IJ's decision. A Joint Motion for Remand was filed by the applicant and the Office of Immigration Litigation on December 20, 2004. As mandated by the Eleventh Circuit Court on February 17, 2005, the Court remanded the case to the BIA. On July 28, 2006, the BIA administratively closed proceedings after determining that the applicant may be eligible to apply for TPS.

The record in this case indicates that during the initial registration period, the applicant had an application for adjustment of status to permanent residence that was pending. Although the adjustment application was subsequently denied on January 31, 2003, a relief from removal was pending with the Board of Immigration Appeals and the Eleventh Circuit Court, and removal proceedings were administratively closed on July 28, 2006.

The applicant filed her initial TPS application on May 4, 2005, prior to the BIA's July 28, 2006 decision. Accordingly, the applicant has established that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(ii). Therefore, the director's decision will be withdrawn.

However, the Federal Bureau of Investigation (FBI) fingerprint results report dated November 28, 2007, indicates that the applicant, under the name of [REDACTED] was arrested on August 26, 2006, in Mobile, Alabama, and charged with "liquor-alcohol/sale/to/minor." The FBI report also indicates that the applicant was born in El Salvador, and that she is a citizen of the United States.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The case will be remanded in order for the director to accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all of her arrests, and for consideration and discussion of all issues pertinent to this case. The director may request any other evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The case is remanded for further action.