



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 09 2008

[EAC 01 211 51436
WAC 06 080 70319]

IN RE:

Applicant:



APPLICATION:

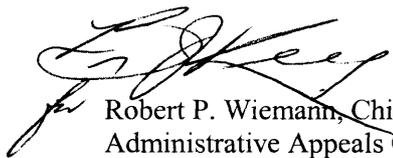
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 Director, Vermont Service Center (VSC), denied the initial application. The director, California Service Center, (CSC) denied a subsequent application for re-registration which is now before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and 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, CSC, denied the application because the applicant had not previously been granted TPS.

On appeal, the applicant asserts that her initial application was incorrectly denied because the VSC director's request for evidence was sent to the wrong address. The applicant further asserts that she has established her qualifying continuous residence and continuous physical presence.

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 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 an application on June 21, 2001 (EAC 01 211 51436) – during the initial registration period. In support of her application, the applicant submitted various documents to establish her continuous residence and continuous physical presence. On November 21, 2002, CIS mailed the applicant a request to provide further evidence of her continuous residence and continuous physical presence to the address listed on her application – [REDACTED] CIS erroneously mailed it to the wrong apartment number, [REDACTED]. On January 24, 2003, CIS resent the request to the same address, this time with the corrected apartment number, [REDACTED]. The applicant did not respond to the director's request. On July 8, 2003, the director denied the application because the applicant failed to establish her continuous residence and continuous physical presence. The applicant was informed that she could file an appeal within 30 days from the date of the denial. The applicant did not file an appeal.

During subsequent re-registration periods, the applicant filed applications that were accepted under the late filing provisions of 8 C.F.R. 244.2. In support of these applications, the applicant submitted additional evidence relating to her qualifying continuous residence and continuous physical presence.

On December 19, 2005, the applicant filed the current application (WAC 06 080 70319) with the director, CSC. Although the applicant indicated that this was her initial application, the director, CSC, treated the application as an application for re-registration. On February 5, 2006, 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 additional evidence relating to her residence and physical presence.

On, April 4, 2007, the director denied the application because the applicant had not previously been granted TPS.

On appeal, the applicant asserts that her initial application was erroneously denied because the request for evidence was sent to the wrong address. The applicant submits additional documentation.

The record contains the following photocopied documents

- The applicant's birth certificate with accompanying translation;
- The applicant's Salvadoran national identification card;
- The birth certificate of the applicant's child, born on June 19, 1998, in Cambridge, Massachusetts;
- The identification page of her Salvadoran passport, issued on April 16, 2002, in Boston, Massachusetts;
- A 2001 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, with accompanying Form W-2, Wage and Tax Statement, and, Form 1099-INT; and,
- A letter from Windsor Street Health Center, dated April 24, 2006, stating that their records show that the applicant has been receiving her primary health care there since November 21, 1997.

The birth certificate of the applicant's child, the IRS forms, and the letter from the Windsor Street Health Center show residence and physical presence immediately prior to and during the initial registration period. All of these documents, indicate residence and physical presence in Cambridge, and Everett, Massachusetts. Together, these documents 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 June 21, 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).

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 passport establishes her identity and her Salvadoran nationality. The record contains results from a recent fingerprint investigation of the applicant conducted by the Federal Bureau of Investigation (FBI) on November 1, 2006, indicating no criminal record that would bar the applicant from TPS eligibility. 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.