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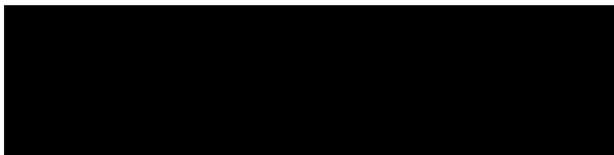
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 06 305 79832]

Office: VERMONT SERVICE CENTER

Date: JAN 29 2008

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 denied the application because the applicant failed to establish she was eligible for late registration.

On appeal, the applicant asserts that she is eligible for TPS.

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 by the Secretary of Homeland Security, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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

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 July 24, 2006 – almost four years after the close of the initial registration period for Salvadorans. The director accepted the application under the late filing provisions in 8 C.F.R. § 244.2(f)(2). In support of her application, the applicant submitted the following photocopied documentation:

1. The identification page of her Salvadoran passport;
2. The birth certificates of four of the applicant's children, indicating that they were all born in the United States; and,
3. An Employment Authorization Documents (EAD), indicating a pending Form I-130, Family Visa Petition, from October 1, 2004, through January 18, 2006.

On December 22, 2006, the director requested that the applicant provide evidence to establish her eligibility for late registration under 8 C.F.R. § 244.2(f). The director also requested that the applicant submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The

director noted that it appeared the applicant had an application for adjustment of status pending, but that this was not enough to establish her qualifying residence and physical presence. In response, the applicant submitted several documents, including the following photocopied documentation:

1. A letter from her employer;
2. Her California driver's license, issued on February 4, 2001; and,
3. Her California State Benefits Identification Card, issued on November 15, 2001; and,
4. A receipt issued on February 4, 2000.

On February 27, 2007, the director denied the application, determining that the applicant had established that she was a citizen of El Salvador, but had failed to establish she was eligible for late registration.

The record reflects that the applicant's spouse, [REDACTED], filed a Form I-130, Family Visa Petition, on the applicant's behalf, and that the I-130 was approved on July 30, 1996, and that she was assigned a priority date of June 22, 1996. The State Department Visa Bulletin for January 2001 indicates that the applicant's priority date was current during the initial registration period and that the applicant was eligible at the time to file a Form I-485, Application for Adjustment of Status to Lawful Permanent Resident based on the approved I-130 and the availability of an immigrant visa for her.¹ It does not appear, however, that the applicant filed an I-485 at that time. Instead, the applicant did not file an I-485 until December 12, 2005. As such, she did not have an adjustment application pending during the initial registration period. The applicant's approved I-130 application was not a qualifying condition for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii). On August 4, 2006, the applicant's adjustment application was denied because the petitioner, her husband, was no longer living.²

The applicant did not file for TPS during the initial registration, which ended on September 9, 2002. She had an approved I-130, with a current priority date, during the initial registration period, but she did not file an adjustment application at that time. Furthermore, she did not file a Form I-485 until December 12, 2005. Therefore, the director's decision to deny the application on this ground will be affirmed.

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 failed to meet that burden.

ORDER: The appeal is dismissed.

¹ In addition, during the initial registration period, the applicant may have been eligible to apply for a V-1 nonimmigrant visa as the spouse of an LPR whose Form I-130 had been pending for more than three years. There is no indication that the applicant filed such an application at the time, although the record does reflect that the applicant received an EAD valid from October 1, 2004 until January 18, 2006, as a V-1 visa holder.

² Despite the fact that the applicant was a single mother of four U.S. citizen children, the denial of the I-485 noted that the applicant had not filed a request that a determination be made that the revocation of the I-130 would not be appropriate or submit evidence that humanitarian reasons existed that would justify a favorable exercise of discretion.