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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **JAN 29 2008**

[EAC 07 010 80825]

[REDACTED]

CONSOLIDATED]

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:

[REDACTED]

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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be remanded for further consideration and action.

The applicant claims to be a 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 was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel asserts that the applicant has been living in the United States since 1991, and that she was in a valid nonimmigrant status during that time.

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 designation of TPS for El Salvadorans has been extended several times, with the latest extension valid 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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on September 13, 2006. 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 applicant submitted no evidence with her Form I-821, Application for Temporary Protected Status. On May 10, 2007, the applicant was requested to submit evidence establishing her eligibility for late registration

as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant did not respond to the director's request.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on July 27, 2007.

On appeal, counsel asserts that the applicant has been in a valid TPS status since 1991.

The record reflects that the applicant filed a Form I-589, Request for Asylum in the United States, pursuant to the *American Baptist Churches v. Thornburgh* (ABC) Settlement Agreements, on May 12, 1995. The record contains a handwritten notation that the asylum request was denied on November 2, 2004. The record does not reflect that the applicant's request was referred to an immigration judge for adjudication in removal proceedings as required by 8 C.F.R. § 208.14(c), or that the applicant was ever notified of the denial of the asylum application. Furthermore, the November 2, 2004, date for the purported denial seems to contradict the applicant's scheduled asylum interview on November 5, 2004. Accordingly, the record suggests that the applicant's asylum request has not been finally adjudicated and is still pending for the purpose of determining TPS. As the applicant filed this application on September 13, 2006, she has submitted sufficient evidence to establish that she qualifies for late registration.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant did not respond to the director's May 10, 2007, request to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on July 27, 2007.

On appeal, the applicant reasserts her claim and submits documentation including a copy of a July 27, 2007, Social Security Statement showing that earnings were reported for her from 1991 through 2006; copies of her Forms 1099-MISC, Miscellaneous Income, for 2002 and 2003; copies of her Forms W-2, Wage and Tax Statements, for 2004 through 2006; a copy of her October 2005 marriage record from the State of Florida; and a copy of her daughter's July 2005 Florida birth certificate.

The applicant has therefore submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. Consequently, the applicant has submitted sufficient evidence to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

However, the application cannot be approved as the record currently stands. The record reflects that the applicant was charged with assault on a family member. On December 10, 2001, in the County Court of Travis County, Texas, she entered a plea of *nolo contendere*, and received a deferred adjudication. She was

placed on supervision for a period of 11 months, required to attend an assault stress clinic, complete 50 hours of community service, and avoid contact with two stated individuals. The applicant was released from deferred adjudication and community supervision on November 26, 2002.

An alien is inadmissible if she has been convicted of a crime involving moral turpitude (other than a purely political offense), or if she admits having committed such crime, or if she admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The applicant pled *nolo contendere* to the charge of assault on a family member and her liberty was restrained in that she was placed on supervision and ordered to avoid contact with certain individuals. Therefore, the applicant has been "convicted" of this offense for immigration purposes.

However, the record does not contain sufficient information do determine whether the applicant has been convicted of a crime involving moral turpitude. The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, *reh'g denied*, 341 U.S. 956 (1951). Assault with bodily injury to a family member is a crime involving moral turpitude. *Matter of Tran*, 21 I&N Dec. 291 (BIA 1996).

The record does not contain a charging document or other details about the offense for which the applicant was convicted. Therefore, the record is remanded to the director to determine if the applicant has been convicted of a crime involving moral turpitude that would render her inadmissible into the United States.

The director may request any 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.

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