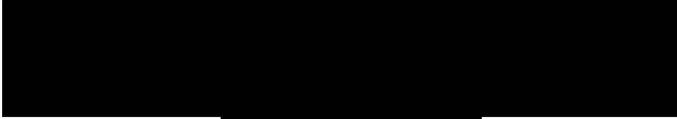




U.S. Citizenship
and Immigration
Services

PUBLIC COpy
identifying data deleted to
prevent clearly **unwarranted**
invasion of personal pnvacy

MA 1



FILE:



Office: Vermont Service Center Date: JUN () 2 2008

[EAC 01 225 53723]

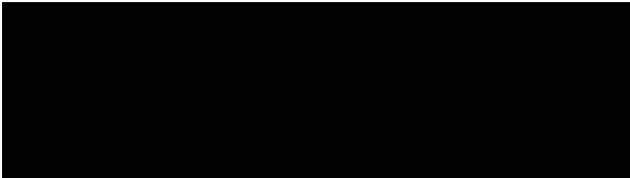
INRE:

Applicant:



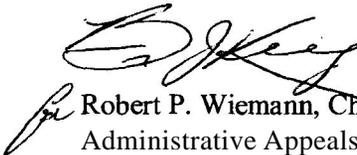
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.c. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the 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 dismissed.

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 the applicant filed her TPS application during the initial registration on July 5, 2001, under Citizenship and Immigration Services (CIS) receipt number EAC 01 225 53723. 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 March 31, 2008, the applicant's counsel informed Citizenship and Immigration Services (CIS) that he was withdrawing from representing the applicant in this proceeding. However, on April 16, 2008, the applicant was represented by a new counsel. Therefore, a copy of the decision will be furnished to the new counsel.

On appeal, former counsel for the applicant states that the applicant is prima facie eligible for TPS. He further states that the applicant had been physically present in the United States since June 20, 1999.

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 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 July 5, 2001. 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.

On June 13, 2007, the applicant was requested to submit evidence establishing her **qualifying** continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for TPS and denied the application on October 10, 2007.

The director incorrectly stated that the applicant's TPS application was received after the initial registration periods and that the application was accepted under the late initial filing provisions. However, the applicant filed her TPS application within the initial registration; therefore, the director's decision to deny the application on this ground will be withdrawn.

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.

On appeal, former counsel reasserts the applicant's eligibility for TPS and submits copies of the applicant's EAD cards issued on July 31, 2001 to September 9, 2002, and August 5, 2005 to September 9, 2006; copies of the applicant's Virginia identification card issued for the period from September 11, 2001 to September 11, 2006, and for the period from March 21, 2007 to June 30, 2007; and, a copy of a letter of employment from _____, Manager of Peking Restaurant, stating that the applicant was employed at the restaurant from January of 2001 to November of 2001.

The record also contains the following evidence previously submitted by the applicant: an affidavit dated June 21, 2007 from _____, stating that the **applicant is his** sister and that she has been in the United States since 1999; an affidavit dated June 19, 2007 from _____, attesting that he has known the applicant since 1999; a copy of the applicant's birth certificate and an English translation; a **copy of the applicant's** Salvadoran passport; and an affidavit dated June 18, 2001, from the applicant's husband, _____ stating that he and the applicant have been living together since the applicant came to the United States on, or about June 20, 1999.

The applicant also submitted a copy of a statement from the Social Security Administration dated May 3, 2006, showing that the applicant had Social Security earnings during the years 2001, 2004, and 2005, however, there is nothing recorded for the years 2002 and 2003. In addition, the applicant submitted a copy of a medical record from the Forest Hill Family Practice, Inc. which indicates that the applicant visited the family medical practice on August 29, 2000, July 1, 2004, and July 11, 2005. While the evidence presented indicates that the applicant may have been in the United States during these periods, it does not establish that the applicant continuously resided and was continuously physically present in the United States during the requisite period.

The applicant has not submitted sufficient credible evidence to establish her **qualifying** continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March

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 this burden.

ORDER: The appeal is dismissed.