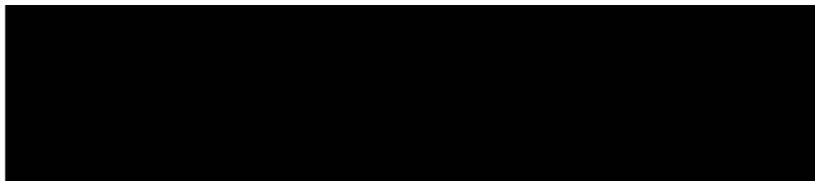


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Office: Vermont Service Center

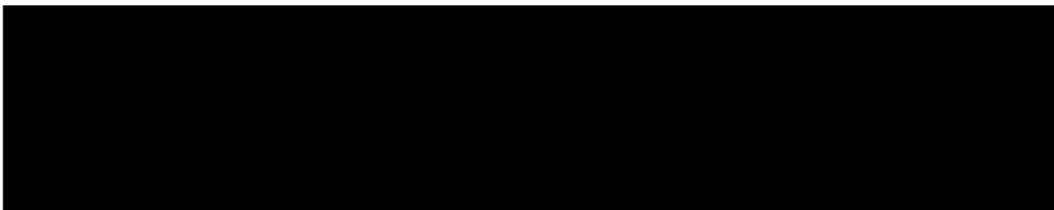
Date: **MAR 12 2008**

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the appeal will be sustained.

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 denied the application because the applicant failed to establish that she was eligible for late registration. The director also denied the application because the applicant failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant asserts her eligibility for TPS and submits additional evidence in support of her claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section IOI(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 § 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 (0)(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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 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 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 of proceedings reflects that the applicant filed a previous application for TPS on March 3, 2005, under receipt number WAC 05 215 70400. On June 6, 2006, the applicant was requested to submit evidence to establish her qualifying continuous residence and continuous physical presence in the United States, as well as her eligibility for TPS late registration. The applicant was also requested to submit evidence of her nationality. The director determined that the applicant did not respond to the request, and therefore, denied that application on July 26, 2006, due to abandonment.

The applicant filed the current application on August 13, 2006. The director denied this application because the applicant failed to establish her qualifying continuous residence and continuous physical presence in the United States, as well as her eligibility for TPS late registration.

On appeal, counsel asserts that the applicant qualifies for TPS late registration, and that she filed an asylum application on June 26, 2001. In addition, counsel asserts that the applicant has met the continuous residence and continuous physical presence requirements, and provides additional documentation in support of this claim.

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed this application on August 13, 2006, after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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.

A review of the record of proceedings reflects that the applicant filed an asylum application on June 26, 2001. The applicant appeared for an interview with an asylum officer in Houston, Texas, on October 17, 2001. The record also contains a letter reflecting that a decision regarding her asylum claim will be mailed to her. It appears that based on the record no final decision has been made on her asylum application, and that it is still pending. As such, the applicant has established that she has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). 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 physical presence in the United States during the requisite time period.

On appeal, counsel submits copies of the following documentation: a statement of account dated September 15, 1999, from Baptist Memorial Health Care; two letters dated November 30, 1999, and September 4, 2001, from the Shelby County Department of Human Services, in Memphis, Tennessee, regarding her eligibility for Medicare; medical reports dated January 11, 2000, from Chris Community Medical Clinic; the birth certificate of her son born on March 30, 2000, in Shelby County, Tennessee; her earnings statement dated October 20, 2000, and September 6, 2001, September 30, 2004, October 8, 2004, October 31, 2004; a consent form from the Le Bonheur Children's Medical Center signed by the applicant on June 3, 2000; an application for her Tennessee Identification Card issued on January 24, 2002; her 2003 Internal Revenue Service (IRS) Form 1040A, and Form W-2, Wage and Tax Statements; and various medical billing statements dated October 31, 2004, December 12, 2004, December 5, 2004, December 15, 2004.

The applicant has submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. Therefore, the director's decision on this issue will also be withdrawn and the application will be approved.

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. The applicant has met this burden.

ORDER: The director's decision is withdrawn and the appeal is sustained.