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**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE: [REDACTED]
[SRC 03 060 52243]

OFFICE: Vermont Service Center

DATE: **MAR 13 2008**

INRE: Applicant: [REDACTED]

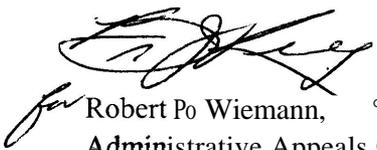
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


for Robert Po Wiemann, of
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center (TSC). The application is now before the Administrative Appeals Office (AAO) on appeal. 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 his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director also denied the application because the applicant failed to establish his eligibility for TPS late registration.

On appeal, counsel asserts the applicant's eligibility 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 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.

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 since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on November 19, 2002.

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).

On January 27, 2003, the applicant was requested to submit photo identification such as a national identity document or passport. The applicant responded to that request. Again on March 18, 2004, the applicant was requested to submit additional evidence to establish his qualifying continuous residence in the United States and continuous physical presence in the United States during the requisite time periods for El Salvadoran TPS. The applicant was also requested to submit evidence of his eligibility for TPS late registration. On April 15, 2004, the applicant responded to the director's request and submitted some additional documentation. The director denied the application on April 20, 2004, because the applicant did not establish his qualifying continuous residence and his continuous physical presence in the United States, as well as his eligibility for TPS late registration.

On appeal, the applicant, through counsel, states that he has been in the United States since November 12, 2000, and that he entered the United States with an "A2" visa. The applicant also states that his spouse is an eligible TPS registrant. The applicant also submits additional documentation.

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

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The applicant claims on the Form 1-821, Application for Temporary Protected Status, that he married • on September 6, 2000, in El Salvador. The applicant also submitted a copy of his marriage certificate reflecting that the applicant was married to • on September 6, 2000, in El Salvador. Further, a review of the record of • reflects that her TPS application was approved on January 9, 2003. As such, the applicant has established that he has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the director's decision on this ground will be withdrawn.

The second issue in this proceeding is whether the applicant has established his continuous residence and his continuous physical presence in the United States during the requisite time periods.

A review of the complete record of proceedings reflects that the applicant has established his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. Therefore, the director's decision on this issue will also be withdrawn. Given that the record fails to reflect any other ineligibility issues, the director's decision to deny the application will 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 appeal is sustained and the application is approved.