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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE: SEP 04 2008

[EAC 06 329 74144, as it relates to
WAC 01 229 51676]

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 Vermont Service Center. 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 (VSC), and is now before the Administrative Appeals Office on appeal. The initial application will be reopened, *sua sponte*, by the Chief, AAO, and that application will be approved. A subsequent application was denied by the VSC director and is currently before the AAO on appeal. The appeal will be sustained and the application will be approved.

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 she was eligible for late registration.

On appeal, the applicant provides a statement in support of her claim of 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 designated by the Attorney General 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 initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on August 23, 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 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).

On December 22, 2006, the director sent a Notice of Intent to Deny the application and requested the applicant 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 continuous residence in the United States since February 13, 2001. The director determined that the record did not contain a response from the applicant; therefore, the director denied the application on March 23, 2007.

On appeal, counsel states that the applicant used an immigration consultant to file her application. Counsel further states that the immigration consultant incorrectly indicated that this application was her initial application for TPS when, in fact, it is a re-registration for TPS. Counsel also states that the applicant submitted a new I-821, Application for Temporary Protected Status, on March 29, 2007, in response to the director's Notice of Intent. Counsel also provides the following: copies of the applicant's I-821, Application for Temporary Protected Status, and I-765, Application for Employment Authorization, signed by the applicant on July 27, 2006, and on March 26, 2007; copies of checks and money orders; copies of three receipt notices from CIS dated August 29, 2006, and April 14, 2007; copies of her birth certificate with an English translation and her Salvadoran passport; a copy of her Employment Authorization Document (EAD); and a copy of an agreement letter from *Acencia Privada De Inmigration* signed on February 1, 2005.

Although counsel notes that the applicant was not assisted by an attorney but by a notario, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on her behalf. See 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. Cf. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) (requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

A review of the record reveals that the applicant filed her initial application (WAC 01 229 51676) with the Immigration and Naturalization Service (INS), now Citizenship of Immigration Services (CIS), on July 9, 2001. The record does not reflect that a Notice of Intent to Deny the application was issued to the applicant. However, that application was administratively closed on July 23, 2004.

On February 22, 2006, the applicant filed her second TPS application under CIS receipt number WAC 05 207 89706, and indicated that she was re-registering for TPS. The California Service Center administratively closed the re-registration application on August 24, 2005.

The applicant filed the current Form I-821 on August 23, 2006. The director denied this application on March 23, 2007, because it was filed outside of the initial registration period and the applicant had failed to establish her eligibility for filing under the provisions of late registration. The director noted in his decision that the applicant had established her continuous physical presence in the United States.

The record of proceeding contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any ground that would bar the applicant from receiving TPS. The initial application will be reopened and approved. Therefore, the director's decision on this issue will be withdrawn and the application will be approved.

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 met this burden.

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