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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAY 14 2010**

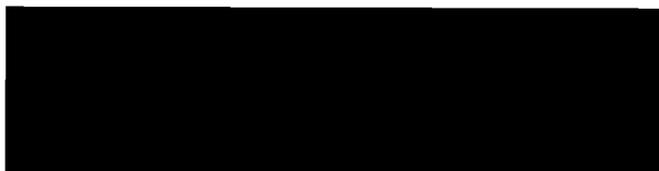
IN RE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
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 sustained. The case will be returned for further action by the director.

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 determined that the applicant failed to establish that she was eligible for filing her TPS application after the initial registration period from March 9, 2001 through September 9, 2002. The director, therefore, denied the application.

On appeal, counsel for the applicant claims that she had an asylum application pending during the initial registration period and is, therefore, eligible for late initial registration.

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 as designated by the Secretary, Department of Homeland Security (Secretary), is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(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 Secretary 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 TPS 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 term *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 term *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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on October 22, 2007. The applicant filed her initial TPS application [REDACTED] on October 10, 2006. That application was denied on October 3, 2008, because according to the director, the applicant failed to establish her eligibility for late initial registration, due to her criminal history and failure to respond to the intent to deny.¹

¹ The notice of intent to deny issued on February 16, 2007, requested the applicant to submit certified court dispositions for her arrests as well as evidence to establish her identity.

The record reflects that on July 26, 1996, the applicant was arrested by the Sheriff's Office in Dallas, Texas for assault. The applicant was also arrested on February 1, 2006, by the Sheriff's Office in Santa Ana, California, for inflicting corporal injury upon spouse/cohabitant.

The record of proceeding confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

The director, in denying the current application on October 6, 2008, noted that the applicant had failed to provide any new and compelling evidence to overcome the basis for denying the initial TPS application. The director determined that the applicant had failed to establish eligibility for late registration.

On appeal, counsel states that the applicant has had an asylum application pending since 1994 and that the applicant has only been convicted of one misdemeanor. According to counsel, the director erred in denying the application and the appeal should be sustained. Counsel also submits evidence in support of these claims.

USCIS records reflect that on November 22, 1994, the applicant filed a Form I-589, Request for Asylum in the United States, which was pending during the initial registration period and at the time the applicant submitted her TPS applications.

Counsel submits court documentation dated June 27, 2003, from the Dallas County Clerk, indicating the assault offense was dismissed in Case no. [REDACTED]. Counsel also submits court documentation in Case no. [REDACTED] from Orange County Superior Court of California, which reflects that on February 16, 2006, the applicant was charged with a misdemeanor offense of violating section 273.5(a) PC, inflicting corporal injury upon a spouse/cohabitant. On October 10, 2006, the complaint was amended to add a misdemeanor charge of battery, a violation of section 242 PC. On the same date, the applicant pled guilty to the battery charge. The applicant was placed on informal probation for three years. The remaining charge of inflicting corporal injury upon spouse/cohabitant was dismissed.

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 USCIS. 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 applicant has met this burden.

The applicant has one misdemeanor conviction for battery and it does not render the applicant ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulation in 8 C.F.R. § 244.4(a). The record does not reflect any grounds that would bar the applicant from receiving TPS. As there are no other known grounds of ineligibility; the director's decision will be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case is remanded for the purpose of sending the applicant a fingerprint notification form, and affording her the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

ORDER: The applicant's appeal is sustained. The case will be returned for further action by the director.