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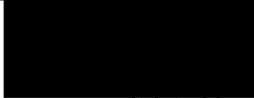
U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: California Service Center

DATE:

APR 10 2007

consolidated herein]
[WAC 05 154 77469 – as it relates to
EAC 04 069 51828 and EAC 02 048 54340]

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:

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.

Cindy N. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Vermont Service Center (VSC). A second application was also denied by the Director, VSC. Both applications will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO), and approved. A subsequent application for re-registration was denied by the Director, California Service Center (CSC), and is currently on appeal before the AAO. The appeal will be sustained.

The applicant is a 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 on the ground that since the applicant's initial application for TPS had been denied, she was ineligible for re-registration under section 244 of the Act.

On appeal, the applicant asserts that she is eligible for TPS and requests that she be added to her husband's TPS application.

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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.
8 C.F.R. § 244.1.

The applicant filed her first Form I-821, Application for Temporary Protected Status [EAC 02 048 54340], with the VSC during the initial registration period on October 29, 2001. It was denied on July 10, 2003, by the director, VSC, on the grounds that the applicant had failed to establish that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001, and that she had not submitted the final court disposition of her arrest on September 3, 1992, for petty theft.

The applicant filed subsequent applications for TPS. The application filed on December 24, 2003 [EAC 04 069 51828], which was treated by the Vermont Service Center as another initial application based on the applicant's selection of that box on the Form I-821, was denied by the director on December 13, 2004, on the grounds that, although the record established that the applicant met the continuous residence and physical presence requirements for TPS applicants from El Salvador, she had not responded to a request for evidence about her arrest for petty theft on September 3, 1992, and had not submitted documentation showing that she qualified for late registration (since the application was filed after the initial registration period had ended on September 9, 2002). The applicant filed another TPS application [WAC 05 154 77469] on February 6, 2005, designated as a re-registration application, which was denied by the director on September 13, 2005, on the ground that the applicant was ineligible for re-registration since her initial application had been denied on July 10, 2003.

The applicant filed a timely appeal to the director's decision of September 13, 2005,¹ asserting that previously submitted documentation along with additional documentation submitted in support of the appeal establish her eligibility for TPS. Among the materials submitted with the appeal is a final court disposition of the applicant's arrest for petty theft on September 3, 1992. As indicated in the document from the Municipal Court of Santa Anita Judicial District, County of Los Angeles, State of California, dated August 7, 2003, the applicant pleaded guilty on November 3, 1992, to the misdemeanor charge "theft of property" under section 484(a) of the California Penal Code. She served one day in jail, was placed on probation for three years, and was assessed a fine of \$246. Thus, the final court disposition requested in earlier proceedings confirms that the applicant has been convicted of a single misdemeanor count. Since she has not been convicted of a felony or two or more misdemeanors committed in the United States, the applicant is not ineligible for TPS under Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

Thus, the applicant has overcome the bases for denial in the director's earlier decisions. The AAO notes that the applicant's arrest for petty theft in 1992, because it was a misdemeanor charge, would not have made the applicant ineligible for TPS, even if she had been convicted, because a single misdemeanor conviction is not disqualifying under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The director previously found that the evidence of record established the applicant's qualifying continuous residence and continuous physical presence in the United States based on documentation submitted in response to the requests for evidence issued in the applicant's first and second TPS applications. The AAO concurs with that finding.

¹ The appeal (Form I-290B) was initially received at the CSC on Monday, October 17, 2005, which met the deadline for filing an appeal as specified in the regulations at 8 C.F.R. § 103.3(a)(2)(i), 8 C.F.R. § 103.5a(b), and 8 C.F.R. § 1.1(h). Since an incorrect filing fee of \$110.00 was submitted, however, the service center returned the appeal to the applicant advising that the correct fee for an appeal was \$385.00. The applicant resubmitted her appeal on November 2, 2005 with the correct fee. The AAO notes that when the CSC decision was issued on September 13, 2005, the filing fee for appeals was still \$110.00. On September 28, 2005, the new fee of \$385.00 was implemented. The CSC decision neglected to instruct the applicant of this impending change, which occurred in the middle of her 33-day appeal period. Since the applicant complied with the instructions by submitting a \$110.00 fee with the I-290B she submitted on October 17, 2005, and rectified the shortfall by submitting the new fee of \$385.00 as soon as she was informed of it by the service center, the AAO concurs with the CSC's decision to treat the appeal as timely filed.

Furthermore, the documentation of record in the applicant's first TPS application established her identity and El Salvadoran nationality. The record does not reveal any grounds of ineligibility for TPS.

The AAO concludes that the applicant has established her eligibility for TPS. Accordingly, the initial application [EAC 02 048 54340], timely filed during the initial registration period, will be reopened *sua sponte* by the AAO. The director's denial of that application on July 10, 2003, will be withdrawn and the application will be approved. The applicant's second TPS application [EAC 04 069 51828] will likewise be reopened *sua sponte*, the director's denial of December 13, 2004 withdrawn, and the application approved. In addition, the director's decision of September 13, 2005 on the re-registration application [WAC 05 154 77469] will be withdrawn. The appeal will be sustained.

The AAO notes that on December 7, 2000, an immigration judge granted the applicant a voluntary departure in lieu of deportation. A warrant of removal (Form I-205) was prepared on December 18, 2000, but the applicant did not adhere to the voluntary departure agreement. Another warrant of removal was issued on January 19, 2007, and the applicant was deported from the United States to El Salvador on January 29, 2007.

The file containing the TPS appeal was not forwarded to the AAO prior to the deportation. It was forwarded to the AAO only on February 2, 2007, after the applicant had been deported, with a request to address the appeal that was pending.

On February 21, 2007, the AAO received a "motion to withdraw bond appeal" from the applicant's counsel. According to counsel, the applicant had filed an appeal on January 24, 2007, based upon the immigration judge's decision that he had no jurisdiction to determine her custody status, but that the applicant's subsequent departure from the United States – *i.e.*, her removal to El Salvador on January 29, 2007 – constituted a withdrawal of her bond appeal under 8 C.F.R. § 1003.4. A review of the record before the AAO, however, does not reveal any pending bond appeal.

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 that burden.

ORDER: The initial application [EAC 02 048 54340] is reopened *sua sponte* and the director's denial of that application is withdrawn. The second application [EAC 04 069 51828] is also reopened *sua sponte* and the director's denial of that application is also withdrawn. In addition, the director's denial of the re-registration application [WAC 05 154 77469] is withdrawn. The initial application, the second application, and the re-registration application are all approved. The appeal is sustained.