



U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date: **DEC 10 2007**

[EAC 01 188 54402, initial I-821]
[SRC 04 082 54699]

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Texas Service Center. Any further inquiry must be made to that office.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (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 after determining that the applicant had failed to establish her eligibility for late initial registration.

On appeal, the applicant submits a statement and additional evidence.

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 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 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 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 parole; 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 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 valid until March 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed this TPS application with Citizenship and Immigration Services (CIS), on January 26, 2004. It is noted that the applicant had initially attempted to submit this application on September 8, 2003, but that it was returned to her numerous times.

The burden of proof is upon the applicant to establish that 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The record of proceedings confirms that the applicant filed this application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period 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 late initial registration. 8 C.F.R. § 244.2(g).

On April 5, 2004, the applicant was requested 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, and her continuous physical presence in the United States since March 9, 2001. In addition, she was requested to submit photo identification, or a national identity document from her country of origin bearing a photograph and/or fingerprint, and two adit-style photographs. The applicant, in response, submitted: a statement; another copy of her birth certificate, with English translation; her State of Texas Identification card; a state of Kansas Birth Certificate for a child born to her on November 19, 1997; tax forms; pay stubs; receipts; and, school documents.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on October 28, 2004.

On appeal, the applicant states that she applied for TPS during the initial registration period and believes that she is eligible for TPS benefits. In support of the appeal, the applicant submits additional evidence consisting of: the CIS receipt notice for her initial TPS application filed on April 24, 2001, under CIS receipt number EAC 01 188 54402; CIS receipt notices for subsequent applications; mailers from her prior Employment Authorization documents (EAD); and, status inquiries on her previous applications.

Review of the record reveals that the applicant filed a TPS application during the initial registration period with the Immigration and Naturalization Service (INS), [now CIS] under receipt number EAC 01 188 54402. The Vermont Service Center (VSC) Director denied that application due to abandonment on July 29, 2003, after determining that the applicant had failed to respond to a request for additional evidence to establish her eligibility for TPS. On December 10, 2002, the applicant had been requested to submit evidence establishing her: date of entry into the United States prior to February 13, 2001; and, qualifying continuous residence in the United States since February 13, 2001. The record does not contain a response from the applicant. Because the initial application was denied due to abandonment, there was no appeal available; however, the applicant could have filed a motion to reopen within 33 days of the date of the decision. The applicant did not file a motion to reopen the denial decision.

The record, however, also reflects that the request for additional evidence and the denial decision on the initial TPS application were mailed to an incorrect address. The documents indicate that they were mailed to the applicant's address in New York as provided on her initial April 24, 2001, TPS application. However, the applicant had provided a new address in Texas on her application for extension of temporary treatment benefits that was stamped as received by the Texas Service Center on November 8, 2002, prior to the issuance of the request for additional evidence and the final denial decision.

The record indicates that the denial due to abandonment on the initial TPS application was made in error. Because the denial due to abandonment was made in error, the decision shall be withdrawn and the initial application shall be approved. Therefore, the current application should be properly viewed as an application for re-registration, rather than a new application under the provisions of late initial registration, and the sole reason for denial stated by the TSC Director has been overcome.

The evidence of record reflects that the applicant has overcome the bases for the denial of her initial TPS application and subsequent application. The applicant has otherwise submitted evidence of her eligibility for TPS. Therefore, the director's decision will be withdrawn and the application will be approved.

It is noted that the applicant has another record of proceedings under file number [REDACTED]. This record contains a Warrant of Removal/Deportation, issued on December 17, 1999, at Dallas, Texas, following the final order of removal *in absentia* to El Salvador issued by the Immigration Judge, Houston, Texas, sitting in Oklahoma City, Oklahoma, on December 6, 1999. Because the applicant is eligible for TPS benefits, she is not subject to removal under this order at this time.

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.