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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 30 2009

[SRC 01 148 70432]
[EAC 07 006 74348]

IN RE:

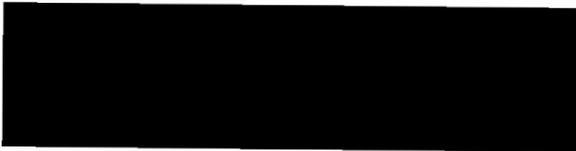
Applicant:



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 Vermont Service Center. Any further inquiry must be made to that office.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: An initial application was denied by the Director, Vermont Service Center (VSC). The re-registration application was then denied by the Director, California Service Center (CSC). The subsequent application was denied by the Director, VSC. The initial application will be reopened, *sua sponte*, by the Acting Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. The director's decision will be withdrawn and the appeal will be sustained.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 record reveals that the applicant filed a TPS application during the initial registration period on April 16, 2001, under receipt number SRC 01 184 70432. On March 10, 2004, the VSC director requested the applicant to submit evidence to establish her qualifying continuous residence and continuous physical presence in the United States. The VSC director determined that the applicant did not respond to the request, and therefore, denied the application on July 19, 2004.

The applicant filed a re-registration application on May 6, 2005, under receipt number WAC 05 218 73581. The CSC director denied that application on September 23, 2005, because the applicant's initial application was denied, and the applicant was not eligible for TPS re-registration. On November 1, 2005, the applicant filed an appeal which was rejected by the CSC director on December 13, 2005.

The applicant filed the current TPS application on September 5, 2006, under receipt number EAC 07 006 74348. The VSC director denied that application on January 17, 2007, because the applicant failed to establish her qualifying continuous residence and continuous physical presence in the United States as well as her eligibility for TPS late registration.

On appeal, counsel for the applicant 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 as 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 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 used 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 used 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 March 9, 2009, upon the applicant's re-registration during the requisite period.

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).

On appeal, counsel states that the applicant was not provided with a request for evidence in order to establish her qualifying continuous residence and continuous physical presence in the United States, as well as to present arguments regarding her filing for TPS under the late registration provisions. Counsel also provides copies of the following additional documentation: a receipt for a prescription dated January 10, 2001, from [REDACTED]; a letter dated February 8, 2007, from [REDACTED] of the Lawndale Medical Center, stating that the applicant provided authorization for the care of [REDACTED] on January 10, 2001; notices of removal proceedings for her spouse, [REDACTED]; the applicant's and her spouse's Internal Revenue Service (IRS) United States Individual Tax Returns for the years 2003-2005; 2005 IRS Form W-2, Wage and Tax Statements, for her spouse; and a receipt from the IRS for 2005

The record of proceedings contains sufficient evidence to establish the applicant's qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence since March 9, 2001. The initial application will be reopened, and approved. Therefore, the director's decision to deny the application on this ground will also be withdrawn and the current 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. Here, the applicant has met this burden.

ORDER: The VSC director's decision is withdrawn. The appeal is sustained and the applications are approved.