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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N. W.
Washington, DC 20536



File:



[LIN-02-018-53067]

Office: Nebraska Service Center Date:

OCT 21 2003

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

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador who indicated on her application that she entered the United States without a lawful admission or parole in 1994. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish she had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant reasserted her claim of eligibility.

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 is eligible for temporary protected status 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 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, or
 - (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (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.

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 entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence 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. A subsequent extension of the TPS designation has been granted by the Secretary of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time 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 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).

In support of a previous application for TPS, the applicant submitted the following documentation:

1. Photocopies of pages from her passport, which was issued at the Salvadoran Consulate in Chicago, Illinois, on March 8, 1994;
2. A photocopy of the certificate of birth for the applicant's son who was born in [REDACTED] on October 2, 1996;
3. Copies of numerous insurance claim forms, bills, and health forms reflecting an Illinois address for the applicant and relating to her son's birth and hospitalization in October 1996;
4. A photocopy of a Cook County, Illinois, Department of Public Health "Child Immunization and Appointment Record" reflecting the applicant's son's immunizations on October 2, 1996, December 12, 1996, February 19, 1997, May 8, 1997, October 2, 1997, December 11, 1997, and October 1, 2001;
5. Photocopies of numerous documents from the Illinois Department of Public Aid from 1996 and 1997;
6. Records of her children's immunizations on November 11, 1996;
7. A letter from [REDACTED] who identified himself as a friend of the applicant's husband and testified to the applicant's residence in the United States since January 13, 2001;
8. A copy of a Post Office receipt dated January 17, 2001, reflecting a North Carolina address for the applicant;
9. A copy of a contract with Martin Olivo dated March 15, 2001, for the lease of the applicant's current residence in Hanover Park, Illinois;
10. A letter dated June 3, 2001, from Brian Eng who testified that he had employed the applicant and her family "periodically" at Silver Lake Restaurant in Roselle, Illinois;
11. A copy of a Post Office receipt dated July 3, 2001, reflecting the applicant's current address; and,
12. A letter dated August 6, 2001, from William Tkachuk, pastor of the Church of the Holy Spirit in Schaumburg, Illinois, who testified that the applicant was a regular member of his parish.

In support of her current application, which was also filed during the initial registration period, the applicant submitted the following documentation:

13. A photocopy of an identity certificate dated June 18, 2001, from the Salvadoran Consulate in Chicago, Illinois, identifying the applicant as a citizen of El Salvador;
14. Copies of receipts for money orders purchased by the applicant in Streamwood, Illinois, on July 5, 2001, November 17, 2001, and February 2, 2002; and,
15. A copy of a page from her passport which was issued at the Salvadoran Consulate in Chicago, Illinois, on January 16, 2002.

On January 15, 2003, the applicant was provided the opportunity to submit evidence establishing her residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

16. An affidavit from Martin Olivo who testified to the applicant's presence in Illinois since February 2001;
17. A receipt from Rena Ware International, Inc., dated November 27, 2001, reflecting an Illinois address for the applicant;
18. A photocopy of a letter from Bartlett High School, Bartlett, Illinois, dated March 11, 2002, regarding her son's attendance record;
19. A photocopy of a "Certificate of Child Health Examination" for her son dated August 16, 2002; and,
20. Photocopies of correspondence and bills from AT&T dated March 11, 2002, March 22, 2002, July 22, 2002, August 22, 2002, September 13, 2002, November 6, 2002, reflecting the applicant's current address.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on February 28, 2003.

On appeal, the applicant reasserted her claim and submitted the following documentation:

21. An affidavit from Jeronima Peraza, who testified that the applicant had lived with her in California from September 1994 through January 1995;
22. A handwritten note from Dr. H. Baig, M.D., who stated that the applicant "has attended our clinic from June 27, 1996, until [March 10, 2003]";
23. A photocopy of a letter dated March 10, 2003, from the registrar of Schaumburg High School, Schaumburg, Illinois, who testified that the applicant's son attended that school from August 25, 1999, through August 30, 2000, and that the applicant's daughter had attended school there from August 23, 2000, through September 7, 2000; and,
24. A photocopy of a letter dated March 10, 2003, from Bartlett High School, Bartlett, Illinois, verifying her son's enrollment there since August 2001.

The applicant has submitted sufficient evidence to establish that she has met the criteria described in 8 C.F.R. 244.2(b) and (c). Therefore, the director's decision will be withdrawn and the 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. The applicant has met this burden.

ORDER: The appeal is sustained.