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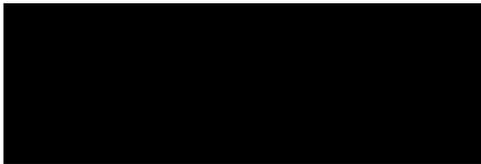
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



FILE: [Redacted]

Office: California Service Center

Date: APR 08 2004

IN RE: Applicant: [Redacted]

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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

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 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 asserted her claim of eligibility for TPS and submitted evidence in support of her claim.

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 the Department 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 Citizenship and Immigration Services (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).

On February 21, 2003, the applicant was requested 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:

1. A copy of a money wire transfer dated July 12, 2000 from Gigante Express.
2. A copy of a Blue Cross Blue Shield medical insurance card, dated January 15, 1999.
3. A copy of her interim driver's license issued on April 1, 1999 by the State of California.
4. A copy of a vehicle citation issued to the applicant on March 1, 1999, in California for speeding.

5. A copy of the applicant's certificate of completion dated March 27, 1999 from a State of California Traffic Safety course.
6. A copy of Mr. [REDACTED] PMI membership card dated February 13, 1998.
7. A copy of a vehicle insurance policy declarations page dated February 23, 2000 showing the applicant as an insured driver.
8. A copy of a birth certificate issued on February 6, 2001 for the applicant's daughter, [REDACTED] born on January 8, 1998.
9. Copies of Mr. [REDACTED] Federal and State Individual Income Tax Returns for the years 2000 and 2001 reflecting the applicant as a dependent.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on June 9, 2003. On appeal, the applicant reasserted her claim and submitted the following documentation:

10. A copy of the Notice of Decision dated June 9, 2003 denying her application for TPS.
11. Copies of her Employment Authorization Cards valid from August 24, 2001 to September 9, 2002, and March 9, 2003 to May 7, 2003.

The tax documents detailed in No. 9 above may suggest that the applicant was in the United States during the year 2001. However, the burden is on the applicant to establish her residence since February 13, 2001, and physical presence since March 9, 2001. Further, it is worth noting that the applicant was declared as "other" dependent on the Mr. [REDACTED] income tax returns; however, the applicant did not explain her relationship to Mr. [REDACTED].

The applicant asserted on appeal that the director erred in denying the application because subsequent applications for re-registration had been approved and Employment Authorization Cards were issued in 2001 and 2003. However, the Employment Authorization Cards cited by the applicant simply indicate that the applicant was authorized to work while her TPS application was pending and do not suggest that the applicant had satisfied her burden of proving her qualifying continuous residence and physical presence in the United States.

The applicant has not submitted sufficient credible evidence to establish her qualifying residence in the United States since February 13, 2001, or her physical presence in the United States since March 9, 2001. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that the applicant was granted voluntary departure, with an alternate order of removal on February 2, 1996, at Los Angeles, California. It appears that the applicant failed to deport the United States, and, consequently, a Warrant of Deportation was issued on August 15, 1996, in Los Angeles, California.

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 failed to meet this burden.

ORDER: The appeal is dismissed.