



U.S. Citizenship  
and Immigration  
Services

IA-1



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: AUG 03 2004

IN RE: Applicant: [REDACTED]

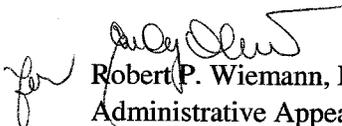
AUG 03 2004

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

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**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 determined that the applicant failed to submit sufficient evidence to establish that she had continuously resided in the United States since February 13, 2001. The director, therefore, denied the application.

On appeal, the applicant states that she did not enter the United States until March 15, 2002, and that she was apprehended by the Border Patrol and placed under immigration proceedings. She states that she applied for TPS because she heard that aliens who were under immigration proceedings could qualify 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, 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. 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).

The record reflects that the applicant submitted her initial application for TPS on July 5, 2002. The applicant stated on both the Form I-821, Application for Temporary Protected Status, and on the accompanying Form I-765, Application for Employment Authorization, that she had entered the United States on March 15, 2001.

On October 22, 2002, the applicant was requested to submit evidence to establish that she had continuously resided in the United States since February 13, 2001, and that she had been continuously physically present since March 9, 2001. In response, the applicant submitted affidavits from three individuals [REDACTED] and [REDACTED], who each stated that she had knowledge that the applicant had resided in the United States since March 15, 2001.

The director concluded that the applicant had not submitted evidence to establish that she had continuously resided in the United States since February 13, 2001. On March 26, 2003, the director denied the application.

On appeal, the applicant states that while she did not enter the United States until March 15, 2001, she had heard on news reports that aliens who were under immigration proceedings were eligible for TPS regardless of when they entered the United States. She also questions why her annual registration TPS applicant was denied, and she states that she had acknowledged on her first application that she was under immigration proceedings.

The record reflects that the applicant filed her initial Form I-821, Application for Temporary Protected Status, and a Form I-765, Application for Employment Authorization, on July 5, 2002, within the initial application period for El Salvadorans. The applicant stated on her initial TPS application that she entered the United States on March 15, 2001, and that she was under immigration proceedings. The applicant states on appeal that she heard on the news that aliens under immigration proceedings may be eligible for TPS. The applicant may be referring to the provisions in 8 C.F.R. § 244.2(f)(2)(i) and (ii) which permit aliens who have been granted voluntary departure status or any relief from removal; or an applicant who 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, to file a TPS application after the expiration of the initial registration period. However, such applicants must still meet all of the other eligibility criteria for TPS, including, in the case of applicants from El Salvador, continuous residence in the United States since February 13, 2001. In the applicant's case, her initial application for TPS was filed within the initial registration period; however, she did not enter the United States until March 15, 2001; therefore, she could not have continuously resided in the United States since February 13, 2001.

While the applicant also states on appeal that her previous application had been approved, the record reflects that the applicant was only previously granted Employment Authorization under 8 C.F.R. § 274a.12(c)(19) as an alien with a pending application for Temporary Protected Status.

The applicant has failed to provide evidence to establish that she entered the United States prior to February 13, 2001, that she has continuously resided in the United States since February 13, 2001, and that she has been continuously physically present since March 9, 2001. The applicant has, therefore, failed to establish that she has met the residence and physical presence requirements 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 record contains a Record of Deportable/Inadmissible Alien, Form I-213, indicating that the applicant entered the United States without inspection on March 15, 2001, at Eagle Pass, Texas. The applicant was released on her own recognizance and was issued a Form I-862, Notice to Appear, ordering her to appear before an immigration judge; however, the date of the applicant's hearing is not confirmed in the record.

The burden of proof is upon the applicant to establish 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.