



U.S. Citizenship  
and Immigration  
Services

MM

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

4/17/2014

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:

[REDACTED]

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.

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

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, counsel submits a statement. Counsel indicated that a brief and/or additional evidence would be submitted within 60 days of the filing date of the appeal. To date, no brief or documentation has been received. Therefore, the record shall be considered complete.

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 except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status 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.

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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. 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 20, 2003, the applicant was requested to submit evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant, in response, provided the following evidence:

1. telephone bills dated October 20, November 20, and December 20, 2002, and February 20, 2003;
2. a letter dated October 2, 2002, from Cat Communications International, acknowledging the applicant's selection of that company as her local telephone service provider; and,
3. letters dated October 23, 2001, May 14, 2002, and April 5, 2002, from [REDACTED] of [REDACTED] regarding the applicant's insurance claim resulting from an automobile accident on October 20, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on April 24, 2003.

On appeal, counsel states that the applicant is eligible for late registration as the spouse of an alien who is currently eligible to be a TPS registrant. Counsel states:

The applicant as the spouse of [REDACTED] can file a late registration for TPS. She did not present [sic] evidence of physical presence from March 9, 2001, until the filing of the application because she entered the United States in June 2001. The issue is if she as the spouse of a TPS beneficiary also has to demonstrate the physical presence requirements established for TPS applicants from El Salvador.

Counsel's assertions on appeal regarding the applicant's eligibility for late initial registration are not relevant to the reason for denial of the application. The director accepted the applicant's late initial filing as the spouse of an alien currently eligible to be a TPS registrant. The CIS regulations regarding late registration do not relax the other requirements for eligibility for TPS detailed in 8 C.F.R. § 244.2(a) through (e). The director denied the application because the applicant failed to provide sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant indicated on the Form I-821, Application for Temporary Protected Status, that she entered the United States on June 30, 2001. In response to the Notice of Intent to Deny, counsel stated:

In response to your notice of action enclosed please find evidence that the applicant has been physically present in the United States since June 18, 2001. This is [REDACTED] first arrival to the United States.

In view of the fact that the applicant did not enter the United States until June 2001, she clearly has not been physically present in the United States since March 9, 2001. Additionally, the applicant has provided only one letter to demonstrate continuous physical presence in 2001. She has submitted evidence for February, April, and May 2002 and from October through December 2003, but no evidence for the period from January 2002 to February 2002 and from June through September 2002. It is determined that the evidence of record is not sufficient to establish that the applicant satisfies 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.

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.