



U.S. Citizenship
and Immigration
Services

MI

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: AUG 25 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

Identifying data deleted to
prevent disclosure of unwaranted
invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits additional documentation. The applicant indicates that she is sending a brief and/or evidence to the AAO within 30 days of filing the appeal. To date, no additional documentation has been received; therefore, the record is 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, 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.

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.

On March 9, 2001, the Attorney General designated El Salvador for TPS. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. The Secretary of the Department of Homeland Security granted a subsequent extension of that designation, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

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.

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).

In support of her initial TPS application, the applicant submitted the following:

1. A photocopy of her El Salvadoran birth certificate, with no English translation;
2. A photocopy of her "California 2000" identification card; and,
3. Photocopies of payroll receipts from [REDACTED] Patchogue, New York, for the one-week pay periods December 30, 2000, and January 6, 2001. The receipts indicate the payee to be [REDACTED]

On October 31, 2002, the applicant was requested to submit additional documentation to establish her continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The director noted that the name on the payroll receipts submitted (No. 3) did not match the applicant's name as noted on her TPS application. In response to the director's request, the applicant provided the following additional documentation:

4. An original receipt from [REDACTED] Miami, Florida, dated November 23, 2002;
5. An original earnings statement from [REDACTED] for the pay period ending August 25, 2001. The name of the payee is noted as [REDACTED] social security no. [REDACTED]. The weekly earnings are indicated to be \$321.75, with a year-to-date total of earnings of \$564.30; and,
6. An original personal auto policy bill from [REDACTED] Syracuse, New York, dated August 19, 2002;

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on April 3, 2003.

On appeal, the applicant submits the following:

7. An original employee reference copy of an Internal Revenue Service (IRS) 2001 Form W-2, Wage and Tax Statement, issued to the applicant by [REDACTED]. The applicant's social security no. is indicated as [REDACTED]. The total yearly earnings are shown as \$6,928.28;
8. An original receipt from [REDACTED], dated August 22, 2002;
9. An original earnings statement from [REDACTED] for the pay period ending August 18, 2001. The weekly and year-to-date earnings are both indicated to be \$242.55;
10. An original earnings statement from [REDACTED], for the pay period ending April 5, 2003;
11. A letter of confirmation of benefits for insurance as an employee of [REDACTED] showing an effective date of January 1, 2003; and
12. A notice of termination of insurance with [REDACTED], dated March 21, 2003.

The applicant claims to have entered the United States in October 2000. At the time of filing her TPS application, the applicant indicated that she had previously used the name of [REDACTED] and had previously used social security card no. [REDACTED] however, the applicant failed to submit any evidence to substantiate her use of this alias.

Based on the documentation submitted, the applicant was employed by Wenner Bread Products, Inc., beginning on August 11, 2001 (No. 9, above). None of the documentation submitted by the applicant establishes that the applicant was, in fact, present in the United States before August 11, 2001.

It is concluded that the applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, or her continuous 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.

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.