



U.S. Citizenship
and Immigration
Services

MI



FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 31 2004**

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

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 clearly unwarranted
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 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 asserts that she has worked at a few places but could not get letters from those employers. She states that since she received her work authorization and a social security number, she has enrolled at Suffolk Community College, and has been working at a restaurant. The applicant submits additional evidence in support of her application.

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 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. 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 initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on October 19, 2001, during the initial registration period.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The applicant submitted a birth certificate and English translation with her initial application.

On April 17, 2003, the applicant was requested to submit evidence establishing her continuous residence since February 13, 2001, and her continuous physical presence since March 9, 2001, in the United States. The applicant, in response, provided a sworn affidavit dated May 5, 2003, from Catalino Bonilla, stating that the applicant has sub-let a room in a property that he rents from September 7, 2000 until that date.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on July 11, 2003.

On appeal, the applicant reasserts her claim and submits the following documentation:

1. A handwritten letter stamped "Taco Bell #1667, Huntington Station, New York," indicating that the applicant has worked there from August 10, 2002 to present;
2. An IRS Form 1098-T, Tuition Payments Statement, filed by Suffolk County Community College, Brentwood, New York, on behalf of the applicant;
3. The applicant's Suffolk County Community College, Western Campus, Grade Report, Fall Semester 2002; and,
4. The applicant's Chase [bank] Statement, dated November 8-December 6, 2002.

The applicant has not submitted sufficient 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.

It is noted that the applicant indicated on her application for Temporary Protected Status that she had previously been under immigration proceedings in Texas in August 2000, and indicated that she did not have the INS documents relating to the case. The Federal Bureau of Investigation (FBI) fingerprint results report, however, indicates that the applicant was apprehended by USINS Border Patrol, Del Rio, Texas, on August 29, 2001, and was placed in removal proceedings. This date of entry on August 29, 2001, further reflects that the applicant has not met the continuous residence and continuous physical presence requirements for the requisite dates. In addition, CIS records contained in this record of proceeding provide the file number for the applicant's removal proceedings as A79 042 937, and indicate that the applicant is the subject of an outstanding administrative warrant of removal from the United States for failure to appear for removal.

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.