



U.S. Citizenship  
and Immigration  
Services

M-1

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: JUL 13 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:

[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.

*for*  
*[Signature]*  
Robert R. Wiemann, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent identity and/or location  
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 determined that the applicant had failed to submit evidence to establish her continuous residence in the United States since February 13, 2001, and her physical presence in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel for the applicant states that neither she nor the applicant received a request for additional evidence because the notice was mailed to an address other than that shown on the 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 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 application for TPS on June 21, 2001. In support of her application, the applicant submitted the following evidence:

- 1.) a copy of a birth certificate for her son, [REDACTED] who was born in New Jersey, on June 10, 2000;
- 2.) a copy of her son's immunization record for the period from September 4, 1996 through September 14, 2000;
- 3.) an August 7, 1997 letter addressed to the applicant from the Board of Social Services, Rochelle Park, New Jersey; and,
- 4.) a copy of Form BOIR-6, dated December 6, 1996, which reflects that the applicant was granted voluntary departure from the United States on that date.

On December 17, 2002, the applicant was requested to submit evidence establishing that she had continuously resided in the United States since February 13, 2001, and that she had been physically present in the United States since March 9, 2001. On March 10, 2003, counsel requested additional time to gather the requested documentation. She stated that it would be submitted as soon as it had been obtained. However, no additional evidence was submitted. On May 15, 2003, the director concluded that the applicant had failed to establish her qualifying continuous residence and physical presence in the United States during the requisite period and denied the application.

On appeal, counsel for the applicant fails to address the grounds of denial or submit any evidence to support the applicant's claim of eligibility for TPS. Counsel claims that neither she nor the applicant received a request to submit additional evidence. However, the record reflects that the December 17, 2002 request for additional evidence was mailed to counsel. On March 10, 2003, counsel requested additional time to enable the applicant to gather documentation. However, no additional evidence has been provided.

The applicant has failed to submit sufficient evidence to establish that she has met the continuous 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.

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.

The record of proceeding contains a copy of Form EOIR-6, Order of the Immigration Judge, reflecting that on December 6, 1996, an immigration judge granted the applicant voluntary departure from the United States on or before June 6, 1997, with an alternate order of deportation if the applicant fails to depart as required. It is noted that the applicant indicated on the TPS application that she entered the United States in 1991 and has not left the United States since that time.

**ORDER:** The appeal is dismissed.