



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUL 21 2004

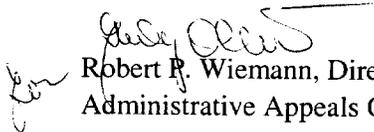
IN RE: Applicant: [Redacted]

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

U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Administrative Appeals Office
20 Massachusetts Avenue, N.W.
Washington, DC 20529

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 failed to submit 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 director, therefore, denied the application.

On appeal, the applicant states that she entered the United States on or about December 7, 2000, and that she became a guest of a [REDACTED] because she did not have authorization to work when she first arrived in the United States. The applicant states further that she believes she has fulfilled all of the requirements for TPS, and she submits additional evidence of residence in the United States. The applicant supplements the appeal with a statement asserting her eligibility to TPS as the spouse of a current TPS registrant. She submits a copy of an Employment Authorization Document for her spouse, and additional evidence.

The applicant also states in the supplement to her appeal that she had received a Form I-797C, Receipt Notice, which had been mailed to an incorrect address. The Form I-797C notice was mailed to the address the applicant provided on the Form I-290B, Notice of Appeal. The record has now been corrected to reflect the applicant's mailing address as that shown in this decision.

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 TPS application on July 25, 2002, during the initial registration period for El Salvadorans. The applicant stated on the TPS application that she entered the United States on December 7, 2000.

In a notice of intent to deny, dated March 31, 2003, 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 in the United States since March 9, 2001. The applicant was granted 30 days to submit the requested evidence. The applicant's response, received on May 11, 2003, included a letter in which she stated that she could not secure a job when she came to the United States, so she lived with her aunt and her aunt's husband until she was granted permission to work. She also stated in her letter that she was submitting affidavits from her common-law husband, her aunt, and her employer. The applicant submitted the following evidence:

- 1.) an April 12, 2003 letter from [REDACTED] who identified himself as the applicant's common-law husband, who stated that the applicant arrived in the United States on or about December 10, 2000, and that he and the applicant were guests of the applicant's sister and her husband, and that they were supported financially by them until he and the applicant obtained work authorization;
- 2.) an April 12, 2003 letter from [REDACTED] who identified herself as the applicant's sister, who stated that she and her husband provided financial support to the applicant when she came to the United States, on or about December 10, 2000; and,
- 3.) an April 12, 2003 statement from [REDACTED] Bussone, Director, Human Resources, Training and Compliance, Chimes Corporate Offices, Baltimore, Maryland, informing the applicant that a Form I-9 the applicant had provided to Chimes District of Columbia, would expire on September 9, 2003.

On June 3, 2003, the director concluded that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite period and denied the application.

On appeal, the applicant reiterates her claim to have provided sufficient evidence to establish eligibility for TPS. The applicant also asserts that she is eligible for TPS as the spouse of an alien who is a current TPS registrant. The applicant submits the following evidence:

- 4.) a copy of an Employment Authorization Document, issued to the applicant's spouse, valid for the period from September 10, 2003 through March 9, 2005; and,
- 5.) a notarized statement, which purportedly represents receipts for payments by the applicant to [REDACTED] for room and board at [REDACTED] (no street address indicated), Reisterstown, Maryland, in January 2001 (two copies), February 2001, April 2001, December 2001, January 2002, and April 2002.

The applicant asserts, on appeal, that she is eligible for TPS as the spouse of a TPS-registrant. The applicant may be referring to regulations that permit, under certain circumstances, a spouse or child of a TPS registrant to file an application for TPS after the initial registration period. However, the primary basis for the denial of the

application was not a failure to file her TPS application during the initial registration period. Rather, the primary basis for the denial of the TPS application was the applicant's failure to establish that she had met the continuous residence and continuous physical presence criteria for TPS. Since the applicant filed her TPS application during the initial registration period, the provisions of 8 C.F.R. § 244.2(f)(2), pertaining to late initial registration, are not applicable in the applicant's case.

The evidence furnished by the applicant does not establish that she has continuously resided in the United States since February 9, 2001, and that she has been continuously physically present in the United States from March 9, 2001 to the date she filed the application for TPS. The applicant stated in her response to the March 31, 2003 notice of intent to deny her application, that she had lived with her aunt and her aunt's husband when she first came to the United States. She stated in her letter that she was submitting a statement from her aunt to support her claim. However, the applicant submitted a statement from an [REDACTED] who identified herself as the applicant's sister. The applicant has not provided an explanation for the discrepancy. In addition, [REDACTED] stated that the applicant had lived with her and her husband, and that they provided financial support to the applicant when she first came to the United States. On appeal, the applicant submits a listing of six rent receipts, described in Item No. 5, above, which were signed by an [REDACTED]. It is not clear from the evidence submitted if [REDACTED] is the applicant's sister or her aunt, and if the applicant resided with [REDACTED] when she first arrived in the United States. However, the rent receipts for January, February, April, and December 2001, and January and April 2002, are not sufficient to establish that the applicant has continuously resided in the United States from February 13, 2001, and that she had been continuously physically present in the United States from March 9, 2001, through the date she filed the application for TPS.

The only other contemporaneous evidence the applicant submitted is an April 12, 2003 letter from her employer, which does not state the date when the applicant began her employment. Therefore, the employer's letter is of no evidentiary or probative value. The applicant claims to have been in the United States since December 2000. It is reasonable to expect that she would have some type of contemporaneous evidence to support that assertion; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or presence. 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.

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.