



U.S. Citizenship
and Immigration
Services

M-1

[Redacted]

FILE:

[Redacted]

Office: TEXAS 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.

for

Robert P. Wiemann, Director
Administrative Appeals Office

U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
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DISCUSSION: The application was denied by the Director, Texas 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 establish that she had entered the United States prior to February 13, 2001. The director, therefore, denied the application.

On appeal, the applicant claims that she has continuously resided in the United States since February 13, 2001, and that she has maintained continuous physical presence since that date. The applicant submits additional evidence.

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 application for TPS on February 19, 2002. The applicant stated on both the Form I-821, Application for Temporary Protected Status, and on the accompanying Form I-765, Application for Employment Authorization, that she had entered the United States on April 19, 2001.

On March 12, 2002, the applicant was requested to submit evidence to establish that she had entered the United States prior to February 13, 2001, that she had continuously resided in the United States since February 13, 2001, and that she had been continuously physically present since March 9, 2001. In response, the applicant submitted affidavits from two acquaintances [REDACTED] who stated that the applicant had resided in the United States since January 13, 2001.

The director concluded that the affidavits provided by the applicant, attesting to her residence in the United States since January 13, 2001, did not override the applicant's statement on the TPS application that she had not entered the United States until April 9, 2001. On January 13, 2001, the director denied the application.

On appeal, the applicant claims that she has continuously resided in the United States on or before February 13, 2001, and that she had been continuously physically present since that date. The applicant submits an affidavit from [REDACTED], whom she identifies as her common law husband, who states that he met the applicant in Houston, Texas, on January 20, 2001, and that they have lived together since May 2001. In addition, the applicant submits the following evidence:

- 1.) receipts and itineraries for travel on [REDACTED], between Texas and Florida, during the period from August 24, 2001 through May 16, 2002;
- 2.) copies of paychecks for wages paid to the applicant by [REDACTED] during the period from September 1, 2002 through December 28, 2002;
- 3.) rent receipts for the period from July 1, 2002 through November 1, 2003;
- 4.) a March 16, 2001 paycheck in [REDACTED]'s name;
- 5.) utility bills in [REDACTED] name for the period from March 5, 2000 through July 2001; and
- 6.) a June 7, 1999 utility bill in the name [REDACTED];
- 7.) a July 30, 2002 affidavit from [REDACTED] attesting that he met the applicant in January 2001 in Houston, Texas; and,
- 8.) a July 30, 2002 affidavit from [REDACTED] attesting that the applicant resided with her in Houston, Texas, from January 13, 2001 to February 20, 2001.

The application for TPS, filed on February 19, 2002, shows that the applicant claimed to have entered the United States on April 19, 2001. The evidence submitted by the applicant does not support her claim that she is eligible for Temporary Protected Status. While the applicant stated on her initial TPS application that she did not have a previous Alien Registration Number, the record reflects the existence of a previous file for the applicant [REDACTED]. The record contains a Warrant for Arrest of Alien, Form I-200, indicating that the applicant entered the United States without inspection on April 19, 2001. The applicant was released on bond and was issued a Form I-862, Notice to Appear, ordering her to appear before an immigration judge. On January 14, 2002, the applicant was notified that she had been scheduled for a Master Calendar hearing on April 18, 2002 at Miami, Florida; however, no further details concerning the applicant's hearing are contained in the record. The applicant's claim on a subsequent TPS application that she entered the United States on February 13, 2001 raises questions of credibility.

The applicant has failed to provide evidence to establish that she entered the United States prior to February 13, 2001, that she has continuously resided in the United States since February 13, 2001, and that she has been continuously physically present since March 9, 2001. 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.