



U.S. Citizenship
and Immigration
Services

M-1

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER

Date:

JUL 23 2004

IN RE:

Applicant:

[Redacted]

APPLICATION:

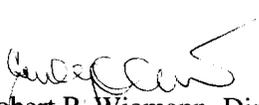
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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

Robert P. Wiemann, Director
Administrative Appeals Office

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 submit sufficient evidence to establish that she had maintained continuous physical presence in the United States from March 9, 2001 through the date she filed the application for TPS. The director, therefore, denied the application.

On appeal, the applicant claims that she has been continuously physically present in the United States from March 9, 2001 to the present. 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 application for TPS on May 22, 2001. The applicant did not submit any evidence to establish that she had met the continuous residence and physical presence criteria for TPS.

On January 24, 2003, the applicant was requested to submit: (1) evidence of identity; (2) evidence of nationality; (3) evidence to establish that she had continuously resided in the United States since February 13, 2001; and, (4) evidence to establish that she had been continuously physically present in the United States since March 9, 2001. On February 14, 2003, the applicant submitted a photo identification document and evidence of nationality. In addition, the applicant submitted the following evidence:

- 1.) a copy of a birth certificate for her daughter, [REDACTED] who was born in Dallas County, Texas, on May 20, 1996; and,
- 2.) three statements from Parkland Memorial Hospital, dated June 11, 1996, June 12, 1996, and June 17, 1996.

The director concluded that the applicant had failed to establish that she had been continuously physically present in the United States from March 9, 2001 to the date of the filing of the application for TPS. On July 30, 2003, the director, therefore, denied the application.

On appeal, the applicant reiterates her claim to eligibility for TPS. She submits copies of the same evidence listed in Item Nos. 1 and 2, above. In addition, the applicant submits copies of two lease contract renewals, for rental of the premises at Unit No. 2009, [REDACTED] Dallas, Texas, for the periods from November 1, 1999 to October 31, 2000, and from November 1, 2000 through October 31, 2001. The lease renewal for the period from November 1, 1999 to October 31, 2000 does not indicate when it was signed; however, the applicant did sign the second lease agreement, for the period from November 1, 2000 to October 31, 2001 on September 25, 2000. While this evidence indicates that the applicant was present in the United States on September 25, 2000, it does not establish that the applicant was continuously physically present in the United States from March 9, 2001 through the filing of the TPS application on May 22, 2001.

It is noted that, on appeal, the applicant also furnished evidence that she was the beneficiary of an approved Form I-130 petition filed on her behalf under section 203(a)(2)(A) of the Act. The applicant may be referring to a provision in the regulations that permits aliens who have a pending application for adjustment of status to file a TPS application after the initial registration period had closed. In the applicant's case, her TPS application was filed in a timely manner. The primary basis for the denial of her TPS application was not her failure to establish eligibility for late registration. Rather, the application was denied because the applicant had not shown that she had met the continuous physical presence requirements described in 8 C.F.R. § 244.2(b). Pursuant to Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, an alien who is a national of a designated state is eligible for temporary protected status only if such alien establishes that he or she has met the continuous residence and physical presence criteria for TPS. The applicant has failed to establish that she has met the continuous physical presence requirements described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is further noted that the applicant was served with a Notice to Appear on March 28, 1996. On May 8, 1996, an immigration judge ordered the applicant removed *in absentia*. A Warrant of Removal/Deportation was issued on May 17, 1996.

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.