

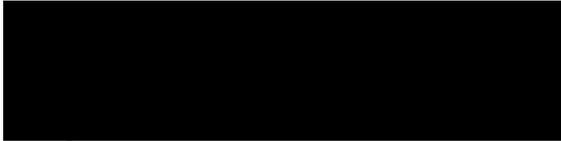
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: Vermont Service Center

Date:

NOV 22 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

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 her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts her eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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 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).

On April 29, 2003, the applicant was requested to submit evidence establishing her residence in the United States as of February 13, 2001, and her physical presence in the United States from March 9, 2001, to the date of filing her application. In response, the applicant submitted some evidence in an attempt to establish her continuous

residence and continuous physical presence in the United States. The applicant also submitted a copy of a February 6, 2003 order by an immigration judge relating to the applicant's hearing in removal proceedings, under file.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on July 9, 2003. Further, the director noted in his decision that the applicant claimed she did not enter the United States until June 30, 2002, and that this date would make the applicant ineligible for TPS.

On appeal, the applicant states that she had resided in the United States before the requisite time periods for TPS, but she had to leave the United States for several days to tend to her children in El Salvador. Further, she states that upon her return to the United States, the immigration officials arrested her. She also indicates on her appeal that she needs additional time to locate the documentation in support of her claim; however, she has not provided any additional evidence along with her appeal, or subsequent to her filing the appeal. While the applicant maintained that the February 6, 2003 order granted her TPS status, the judge's order with only a hand-written notation of "TPS" indicated, only allowed the applicant's hearing to be administratively closed. This allows the applicant the opportunity to file for TPS; but he or she must still meet all other applicable provisions of the statute and the regulations. The applicant has not submitted sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the requisite time periods for TPS. In addition, the applicant has not provided any evidence of her claimed departure from the United States.

A review of the record reflects the applicant stated on the Form I-821, Application for Temporary Protected Status, that she did not enter the United States until June 30, 2002. The record contains a letter from the applicant's spouse requesting that she be included in his "TPS case." However, TPS status cannot be acquired through another individual. All applicants must meet the date of entry, continuous residence, and continuous physical presence criteria for TPS. Therefore, the applicant could not have met the requirements that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001. She has, thereby, 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 TPS will be affirmed.

It is also noted that another record, relating to the applicant's removal proceedings, was created on June 30, 2002.

An alien applying for TPS 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.