

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

MI

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: [Redacted]

Office: Nebraska Service Center

Date: SEP 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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 she had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserted her claim of eligibility for TPS and submitted evidence in support of her claim.

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 is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national of a 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 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 entry on or prior to February 13, 2001, 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 January 23, 2003, the applicant was requested to submit evidence establishing her residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant was also requested to submit a photo identity document. The applicant, in response, provided the following documentation:

1. Copies of her airline ticket-stub for a flight from Portland, Oregon to Los Angeles, California on February 10. The applicant stated that the flight occurred in the year 2000.
2. An affidavit dated January 28, 2003, from an acquaintance, [REDACTED] who stated that she had known the applicant since February 2000.

3. An affidavit dated January 28, 2003, from an acquaintance, [REDACTED] who stated that he had known the applicant since February 2000.
4. An affidavit dated January 28, 2003, from an acquaintance, [REDACTED] who stated that she had known the applicant since February 2000.
5. An affidavit dated October 24, 2002, from an acquaintance, [REDACTED] who stated that she had known the applicant since February 2000.
6. An affidavit dated February 7, 2003, from an acquaintance, [REDACTED] who stated that she had known the applicant since February 2001.
7. An affidavit dated February 7, 2003, from an acquaintance, [REDACTED] who stated that he had known the applicant since February 2001.
8. An affidavit dated January 28, 2003, from an acquaintance, [REDACTED] who stated that he had known the applicant since March 2001.
9. A copy of a letter dated February 3, 2003, from [REDACTED] Instructor, who stated that the applicant had attended English classes in Faribault, Minnesota from March 2001 to December 2001.
10. Copies of hand-written receipts for the months of May, June, and July 2000, and for the months of February 2001 to August 2002.
11. A copy of the applicant's Tithing Settlement Statement dated January 28, 2003, from the Church of Jesus Christ of Latter-Day Saints, Faribault Branch reflecting tithing from April 14, 2002 to December 29, 2002.
12. Copies of an English translation of her Salvadoran birth certificate.
13. Copies of the applicant's Salvadoran personal identification card.
14. A copy of her Salvadoran voter's registration card.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on April 9, 2003. The director also noted that the applicant had failed to provide documentary evidence that [REDACTED] are one and the same person. On appeal, the applicant reasserted her claim and submitted the following documentation:

15. Her marriage certificate in Spanish along with an English translation reflecting the applicant's marriage to [REDACTED]
16. A resubmitted copy of the letter from [REDACTED] as detailed in No. 9 above.
17. A copy the applicant's boarding pass as detailed in No. 1 above.

The applicant has provided documentation to establish her use of [REDACTED] based on her marriage to [REDACTED] as evident by the marriage document as detailed in No. 15 above.

It is noted that the rent receipt marked No. "36466" as detailed in No. 10 above, appears to have been used for two different time periods. Specifically, the same receipt was used for rent payments covering May 1 to May 31, 2000, as well as the period July 1, 2002 to July 31, 2000. It does not seem reasonable that the same receipt would have been used for two separate rent payments. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The statements from her acquaintances, as detailed in Nos. 3 through 8 above, regarding the applicant's claimed presence in the United States before February 13, 2001, are not supported by credible evidence. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or presence. Further, the letter from Ms. Heather Bae, as detailed in No. 9, is not supported by any corroborative evidence, nor is it in affidavit form. It is reasonable to expect that the applicant would have some contemporaneous evidence in support of these statements.

The applicant has not submitted sufficient credible evidence to establish her qualifying residence in the United States since February 13, 2001, or her physical presence in the United States since March 9, 2001. She has, therefore, 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 temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish her eligibility for late registration. As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further.

An alien applying for temporary protected status 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.