



U.S. Citizenship
and Immigration
Services

VAM



FILE: [Redacted] Office: Nebraska Service Center Date: 11/17/2014

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".

for 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 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 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).

Along with her application for TPS, the applicant provided the following documentation:

1. Copies of her Salvadoran birth certificate along with an English translation.
2. Copies of hand-written receipts for rent payments for the months of February 2001 through July 2002.

3. A hand-written rent receipt dated January 2001.
4. A church letter dated August 7, 2002, from [REDACTED] of the Iglesia Fuente de Vida, who stated that the applicant assisted with church services since January 14, 2001.
5. A copy of her Salvadoran voter's registration card.
6. Copies of her Salvadoran identification card.
7. A copy of an affidavit dated September 26, 2002, from [REDACTED] who stated that the applicant had been taking care of her children since January 17, 2001.
8. An affidavit dated November 9, 2002, from [REDACTED] who stated that the applicant had been a tenant in his home from February 1, 2001 to November 2001. He also stated that the applicant had lived in one of his apartments since November 1, 2001.

On September 10, 2002, 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, in response, resubmitted copies of her rent receipts as detailed in No. 6 above.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on January 28, 2003. On appeal, the applicant reasserted her claim and submitted the following documentation:

9. Copies of her money transfer receipts dated December 15, 2002 and January 12, 2003, from La Estrella.
10. Resubmitted copies of hand-written receipts for rent payments for the months of February 2001 through July 2002.
11. Copies of her Western Union money transfer receipts dated August 26, 2002 and October 26, 2002.
12. An affidavit dated February 12, 2003, from [REDACTED] who stated that the applicant had taken care of her children since January 17, 2001.
13. A copy of an affidavit dated February 9, 2003, from [REDACTED] who stated that he has known the applicant since childhood.
14. An affidavit dated February 12, 2003, from [REDACTED] who stated that the applicant had provided housecleaning and babysitting for her children since about February 17, 2003.
15. Copies of envelopes and return receipts dated May 30, 2002 to July 18, 2002.
16. A copy of a receipt dated November 13, 2002, from the Post Office in Denison, Iowa.
17. Copies of the Notice of Action for her TPS and employment authorization applications dated June 3, 2002.
18. A copy of a letter in Spanish dated February 13, 2003, from [REDACTED]. An English translation of this document was not provided.
19. A copy of an affidavit in Spanish dated February 11, 2003, from [REDACTED]. An English translation of this document was not provided.

The statements as detailed in Nos. 7, 8, 12, and 13 are not supported by credible evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support the assertions. Affidavits are not, by themselves, persuasive evidence of residence or physical presence.

Additionally, the copies of hand-written rent receipts as detailed in No. 2 above, are not supported by any credible evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since January 2001. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support the hand-written rent receipts.

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.

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.