



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
protect identity of unrepresented
individuals of interest in pending
litigation

Public Law 107-173

M1

[REDACTED]

FILE: [REDACTED]
[EAC 01 206 55790]

Office: VERMONT SERVICE CENTER

Date: AUG 01 2005

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.

Handwritten signature of Robert P. Wiemann in black ink.

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 (AAO) on appeal. The appeal will be dismissed.

The applicant is stated to be 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 that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel for the applicant submits a brief statement.

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.

- (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 conditions described in paragraph (f)(2) of this section.

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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, the latest granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The applicant filed her initial Form I-821, Application for Temporary Protected Status, on June 4, 2001. In support of her initial application, the applicant submitted the following documentation:

1. A photocopy of an abstract of her El Salvadoran birth certificate, with English translation, issued in El Salvador on April 22, 1999.

On October 21, 2002, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted:

2. A photocopy of an airline itinerary indicating that the applicant traveled from Los Angeles, California, to New York, New York, on July 17, 2000;
3. A photocopy of an affidavit, dated March 25, 2001, from [REDACTED] stating that she had rented a room to the applicant since December 2000;
4. A photocopy of a letter indicating that she applied for a social security card on July 19, 2001;
5. A photocopy of a page from a Verizon statement, with no name or address noted;
6. A photocopy of an undated letter from the New York State Department of Motor Vehicles;
7. A photocopy of a "New York State identification Card," issued on May 13, 2002;
8. A photocopy of a New York State Department of Motor Vehicles Interim Identification Card, dated May 13, 2002;
9. A photocopy of a mailing from the Department of Social Services, Ronkonkoma, New York, dated January 6, 2003;
10. A photocopy of a document indicating that she received services from the Southside Hospital, Bayshore, New York, on November 22, 2002; and,
11. A photocopy of an earnings statement from American Wooden Work, Inc., showing a "hire date" of September 4, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on June 19, 2003.

On appeal, counsel states that the director factually and legally erred in denying the applicant's TPS application, and that the record will show that the applicant is prima facie eligible for TPS. Counsel has not submitted any additional documentation in support of the appeal.

On her Form I-821, the applicant claimed to have lived in the United States continuously since July 14, 2000. It is reasonable to assume that she would have a variety of objective contemporaneous evidence to support this claim. CIS records, and No. 3, above, indicate the applicant's physical presence in the United States from on or about July 14 to on or about July 18, 2000. However, the applicant failed to appear for a hearing before an immigration judge on January 24, 2001. Nos. 4, 7, 8, 9, 10, and 11 are all dated on or after July 19, 2001. Nos. 5

and 6 cannot be considered as evidence, as the documents are not dated and/or do not contain the applicant's name and address. The only document submitted by the applicant covering the dates required is No. 3, which has little evidentiary weight or probative value as it is not supported by objective evidence such as a lease agreement and rent receipts.

It is concluded that the applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing her TPS application on June 4, 2001. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

A review of CIS records reflects that the applicant was apprehended pursuant to an Airport Interdiction Operation at John F. Kennedy Airport, New York, New York, on July 18, 2000. At that time, she claimed to have last entered the United States without inspection at the U.S./Mexico border near Douglas, Arizona. On January 24, 2001, the applicant failed to appear for a hearing before an immigration judge as a result of that apprehension, and was ordered removed from the United States. It appears that the removal order remains outstanding.

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.