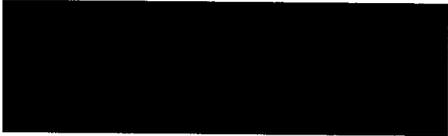




U.S. Citizenship
and Immigration
Services

identify...
prevent...
invasion of personal privacy



MM

FILE: [REDACTED]
[EAC 03 025 51567]

OFFICE: VERMONT SERVICE CENTER

DATE: AUG 25 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:



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 had failed to submit evidence to establish that she: (1) is a national of El Salvador; (2) had continuously resided in the United States since February 13, 2001; and (3) had been continuously physically present from March 9, 2001, to the date of filing her application.

On appeal, the applicant's representative submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 § 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.

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 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 Department of Homeland Security, with validity 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 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 shows that the applicant filed her TPS application on September 3, 2002. In support of her application, the applicant submitted:

1. Copies of the applicant's El Salvadoran birth certificate and her daughter's El Salvadoran birth certificate with English translations.
2. Copies of Western Union receipts for money transfer by the applicant's husband [REDACTED] to the applicant in El Salvador dated December 10, 1999, September 21, 2000, and November 27, 2000.
3. Copies of Health Plus identification cards issued on May 1, 2001, to [REDACTED] (the applicant's daughter).

The director noted that evidence submitted only documented the applicant's presence in the United States in May 2001. Therefore, the applicant was requested on September 30, 2003, to submit evidence to establish that she: (1) is a citizen or national of El Salvador; (2) has continuously resided in the United States since February 13, 2001; and (3) has been continuously physically present from March 9, 2001, to the date of filing her application. The applicant failed to respond; therefore, the director denied the application on March 17, 2004.

On appeal, the applicant's representative asserts that the applicant did submit documentary evidence of her physical presence and that he is attaching copies of the documents. He submits a copy of the applicant's biographic page of her El Salvadoran passport issued in New York on March 30, 2004. Based on this passport, the applicant has, therefore, overcome the finding of the director that the applicant had failed to establish her identity. He also submits:

4. A copy of an affidavit from [REDACTED] dated April 13, 2004, stating that the applicant "is baby sitting my two children since March 30, 2001," and that she pays the applicant \$125 every week.
5. A copy of a letter from [REDACTED] dated April 6, 2004, indicating that the applicant was her patient from March 26, 2002, to the present.
6. Statements of account for the applicant and her husband, issued by Bretz & Coven, LLP, for payments received from July 10, 2002 to October 8, 2002.
7. A copy of the Brooklyn Hospital Center medical bill for service rendered to the applicant on February 12, 2003.
8. Copies of various receipts and letters pertaining to the applicant dated during February 2004 and March 2004, after the requisite period required to establish continuous residence and continuous physical presence.

Documentation furnished by the applicant only establishes her presence in the United States since March 30, 2001. Further, the applicant indicated on her TPS application and on her application for employment authorization (Form I-765) that her date of entry into the United States was in March 2001. Additionally, CIS records show that the applicant was admitted into the United States on March 7, 2001, with a B-2 nonimmigrant visitor's visa, and was authorized to remain in the United States until September 6, 2001.

The applicant arrived in the United States subsequent to the eligibility period. Therefore, she could not have met the criteria for continuous residence in the United States since February 12, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c).

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.