



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: AUG 29 2005

[EAC 01 206 52327]

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.

for 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 that she had continuously resided in the United States since February 13, 2001, and failed to establish that she had been continuously physically present in the United States since March 9, 2001.

On appeal, applicant provides a brief statement and additional documentation.

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 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 section 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.
- (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 issues raised by the director to be addressed in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and whether she has been continuously physically present in the United States since March 9, 2001.

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.

El Salvadorians applying for TPS 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.

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. 8 C.F.R. § 244.9(a). The sufficiency of all evidence, however, 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).

In a notice of action, dated October 16, 2002, the applicant was requested to submit evidence establishing her continuous physical presence in the United States since March 9, 2001, and her continuous residence in the United States since February 13, 2001. In response, the applicant provided two letters of reference.

The director found that the documentation presented by the applicant in response to the notice of action failed to establish the applicant's continuous residence and her continuous physical presence in the United States during the requisite timeframes. The director denied the application on May 19, 2003.

On appeal, the applicant states that she is furnishing documents to establish that she resided in the United States since February 13, 2001. The applicant submits: a letter dated June 10, 2003, from the administrative director of Columbia Road Health Services in Washington, D.C., who states that the applicant visited Columbia Road Health Services on March 19, 2001, April 10, 2001, and May 10, 2001; a copy of a medical work sheet, dated May 10, 2001; copies of earnings statements from JWD Cleaning Services, Inc., for the pay periods covering September 24, 2001 through September 29, 2001, October 1, 2001 through October 6, 2001, November 26, 2001 through December 1, 2001, December 31, 2001 through January 5, 2002, January 21, 2002 through January 26, 2002, April 8, 2002 through April 13, 2002, May 13, 2002 through May 18, 2002, and July 22, 2002 through July 27, 2002; a photocopy of an identification card; and, a photocopy of the biographical page of the applicant's El Salvadorian passport.

Although the applicant has provided substantial documentation to establish continuous residence and continuous physical presence in the United States after the filing date (June 4, 2001) of her TPS application and the receipt of her Employment Authorization Card, which was issued on June 26, 2001, the documentation provided between the onset of the requisite timeframes and the filing of her TPS application (approximately four months) is minimal. The letter from Columbia Road Health Services in Washington, D.C. and the medical work sheet are not sufficient in establishing the applicant's day-to-day living in the United States since February 13, 2001 to June 4, 2001, the filing date of her TPS application. Consequently, the director's decision to deny the application for temporary protected status for this reason 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.