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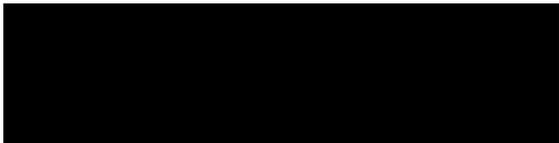
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: FEB 03 2005

[WAC 02 273 52945]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 continuous residence in the United States since February 13, 2001.

On appeal, the applicant 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 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 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, or
 - (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. 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 indicates that the applicant first arrived in the United States at Miami International Airport, Miami, Florida, on October 7, 2001, as a passenger in transit without a visa (TWOV) from San Salvador, El Salvador, to Madrid, Spain. When she presented herself for inspection, she requested political asylum in the United States. She was found to have a credible fear of persecution if she were to be returned to El Salvador, and was paroled pending an asylum hearing before an Immigration Judge. On October 23, 2002, the Immigration Judge

administratively closed the asylum proceeding because the applicant failed to appear for her hearing. She filed her I-821, Application for Temporary Protected Status, on September 3, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish continuous residence in the United States since February 13, 2001, and denied the application on March 10, 2004.

On appeal, the applicant states that her husband and her daughter have been granted TPS, and she believes she should be granted TPS since she was the spouse of an alien who was currently eligible to be a TPS registrant during the initial registration period. In support of her statement, the applicant submits the following:

1. photocopies of two Employment Authorization Cards valid from September 10, 2002 to September 9, 2003 and from January 21, 2004 to March 9, 2005, respectively, indicating that [REDACTED] CIS registration number [REDACTED] has been granted TPS;
2. a Form I-797 approval notice indicating that [REDACTED] has been granted TPS;
3. photocopies of two Employment Authorization cards valid from September 10, 2002 to September 9, 2003 and from February 3, 2004 to March 9, 2005, respectively, indicating that [REDACTED] CIS registration number [REDACTED] has been granted TPS;
4. a Form I-797 approval notice indicating that [REDACTED] has been granted TPS: and,
5. a Salvadoran marriage certificate with English translation indicating that [REDACTED] and [REDACTED] were married in Usulután, El Salvador, on March 19, 1999.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). While the evidence of record confirms that the applicant's husband and daughter were granted TPS, the record shows that the applicant did not enter the United States until October 7, 2001. Since the applicant did not enter the United States until October 7, 2001, she cannot establish continuous residence in the United States since February 13, 2001. Therefore, the applicant has not established that she satisfies the residence requirement described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, since the applicant did not enter the United States until October 7, 2001, she also cannot establish continuous physical presence in the United States since March 9, 2001. Therefore, the application also may not be approved for this reason.

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.