

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

*Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy*

M1



FILE: [REDACTED]
[EAC 02 005 51455]

Office: VERMONT SERVICE CENTER

Date: JUN 24 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 (AAO) 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 had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel for the applicant submits 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 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 has been granted by the Secretary of the Department of Homeland Security, the latest 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 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 properly filed her initial Form I-821, Application for Temporary Protected Status, on September 10, 2001. In support of her application, the applicant submitted a photocopy of her El Salvadoran birth certificate, with English translation.

On November 20, 2002, and March 26, 2003, the director requested the applicant to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, counsel for the applicant submitted:

1. A letter, dated April 15, 2003, from [REDACTED] stating that he employed the applicant as a housekeeper once a week in January 2001; and,
2. An undated letter from [REDACTED] stating that she has known the applicant since her entry into the United States on January 11, 2001.

Counsel stated, in a letter dated April 25, 2003, that the applicant never sent money abroad, and never obtained government/state issued identification or a driver's license because she was always paid in cash.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on September 4, 2003.

On appeal, counsel for the applicant submits the following additional documentation:

3. A photocopy of the identification page from the applicant's El Salvadoran passport;
4. An affidavit, dated August 14, 2003, from [REDACTED] stating that the applicant has been living with him since she came to the United States on January 25, 2001;
5. An affidavit, dated August 14, 2003, from [REDACTED] stating that she has known the applicant since January 2001;
6. An affidavit, dated August 14, 2003, from Irma [REDACTED] stating that she has known the applicant since January 2001;
7. A letter, dated August 6, 2003, from [REDACTED] stating that she has known the applicant since January 2001;
8. A photocopy of an un-translated document from the Family Planning Clinic, Forsyth County Department of Public Health, Winston Salem, North Carolina, dated October 2, 2001;
9. A photocopy of a Forsyth Tech ESL Program Student ID, issued to the applicant on October 29, 2001;
10. A photocopy of a Forsyth County Health Department, Winston-Salem, North Carolina, Lifetime Immunization Record, dated November 8, 2001;

11. Photocopies of employee earnings statements issued to the applicant by Temporary Resources, Inc., on a monthly basis from January 2002 to August 2003;
12. A photocopy of a rental Contract for Countryside Villa Apartments, including the applicant's name as an occupant and signed by lessee [REDACTED] on February 23, 2003;
13. A photocopy of a North Carolina Certificate of Title issued to the applicant for a 1995 Ford car, issued on July 12, 2002
14. A photocopy of a North Carolina Baptist Hospitals, Inc. billing statement issued to the applicant on May 17, 2003
15. A photocopy of a letter from the Department of the Treasury, Internal Revenue Service, Atlanta, Georgia, to the applicant dated August 5, 2003.

The applicant claims to have lived in the United States since January 25, 2001. It is reasonable to assume that she would have a variety of contemporaneous evidence to support this claim. The letters from acquaintances (Nos. 2, 4, 5, 6, and 7, above) are not, by themselves, persuasive evidence of residence or physical presence. Nos. 8 through 15 are dated after the applicant had applied for TPS and are all dated six months or more beyond the dates required to establish continuous residence and continuous physical presence. Finally, No. 1 has little evidentiary weight or probative value as does not provide the address where the applicant resided during the period of her employment, as required under 8 C.F.R. § 244.9(a)(2)(i). Furthermore, the employment letter is not supported by contemporaneous, objective evidence.

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 continuous physical presence in the United States since March 9, 2001, to the date of filing her application on September 10, 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.