



U.S. Citizenship  
and Immigration  
Services

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

**PUBLIC COPY**

[REDACTED]

MI

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 21 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.

*Cindy N. Gomez*  
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 matter will be remanded for further consideration and action.

The applicant indicates that she 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 due to lack of prosecution because the applicant did not provide sufficient evidence to establish her qualifying continuous physical presence in the United States since March 9, 2001.

On appeal, counsel for 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, 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 applicant did not submit any evidence of her qualifying continuous physical presence in the United States since March 9, 2001, with the Form I-821, Application for Temporary Protected Status.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on February 23, 2004. [It is noted that, although there is no indication of statutory ineligibility in this case, the director did not issue a notice requesting additional evidence to establish the applicant's nationality and identity, or evidence to establish her qualifying continuous residence and physical presence in the United States.]

On appeal, counsel states that the applicant has previously been granted TPS. He indicates that the person who assisted the applicant in filling out the Form I-821 neglected to submit any supporting documents with the application. Counsel submits the following evidence in an attempt to establish the applicant's continuous physical presence in the United States:

1. The applicant's 2002 and 2003 federal income tax returns filed jointly on behalf of the applicant and her husband, [REDACTED] by H&R Block in Ontario, California;
2. a letter dated December 23, 2003, from [REDACTED] Tax Collections Division, Treasurer-Tax Collector, County of San Bernardino, San Bernardino, California, returning a check for taxes that were already paid and informing the applicant and her husband, [REDACTED] that they owed a tax installment payment on or before April 12, 2004;
3. a grant deed indicating that the applicant and her husband purchased property in Chino, California, on March 18, 2002;
4. a property tax bill from the Treasurer - Tax Collector, San Bernardino, California, dated May 1, 2002;
5. a bill dated May 4, 2001, from E & L Legal & Tax Service, La Puente, California, reflecting the following actions: invoice dated March 7, 2001; payment made March 7, 2001; and, payment made on April 19, 2001;
6. a letter dated March 3, 2004, from [REDACTED] Senior Loan Officer of Capital Mortgage, stating that she processed residential loan applications for the applicant and her husband in December 2000, September 2000, and late December 2001, and that she closed a loan for the applicant and her husband in May 2002 and refinanced the loan in August 2003;
7. a letter of acquaintance dated March 2, 2004, from [REDACTED] stating that he is a personal friend of the applicant and her husband and that the applicant has lived in the U.S. since 1994;

8. a letter dated March 8, 2004 from [REDACTED] stating that he has been a business associate of the applicant's husband, [REDACTED] since 1982 and that his family has a close friendship with the [REDACTED] family;
9. a letter dated March 5, 2004, from [REDACTED] stating that [REDACTED] has worked for him for over eighteen years, and that he met the applicant, who was Mr. [REDACTED] fiancée at the time, in 1994;
10. a bill dated October 31, 2001, from [REDACTED] Jewelers addressed to the applicant at [REDACTED] West Covina, California;"
11. monthly checking account statements in the names [REDACTED] and [REDACTED] for the periods from February 3 through March 7, 2001, and from March 8 through April 5, 2001;
12. a California birth certificate indicating that [REDACTED] was born to [REDACTED] and [REDACTED] in Los Angeles, California, on August 18, 1994.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). Upon review of the evidence submitted by the applicant on appeal, it is determined that the applicant has submitted sufficient evidence to establish that she satisfies the physical presence requirement described in 8 C.F.R. § 244.2(b). Consequently, the applicant has overcome the ground for denial of the application.

However, the application may not be approved at this time. The applicant has not provided sufficient evidence to establish identity and nationality. Pursuant to 8 C.F.R. § 244.9(a)(1), each application must be accompanied by evidence of the applicant's identity and nationality. Acceptable evidence in descending order of preference may consist of a passport; a birth certificate accompanied by photo identification; and/or, any national identity document from the alien's country of origin bearing photo and/or fingerprint. Although the applicant has provided a photocopy of a Salvadoran birth certificate with English translation, she has not provided photo identification, a passport, or a national identity document with photograph and/or fingerprint. Accordingly, the matter is remanded for action consistent with the foregoing.

As always, 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.

**ORDER:** The matter is remanded for further consideration and action.