



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: NOV 30 2005

[EAC 03 187 55097]

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.

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 continuous residence in the United States since February 13, 2001, and 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 TPS 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 except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 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.

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.

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. A subsequent extension of the TPS designation has been granted, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed her Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on May 27, 2003.

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 indicated on her Form I-821 that she entered the United States without inspection on February 7, 2001. In support of her application, the applicant submitted the following:

1. a notice from CIS indicating that the applicant's asylum application had been terminated at her request, and her asylum application withdrawn as of April 19, 2003, the date of the notice.

On February 10, 2004, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The record does not contain a response from the applicant.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on July 21, 2004.

On appeal, counsel for the applicant asserts that the director had “factually and legally erred in denying the applicant’s TPS [application].” Counsel submits the following:

2. photocopies of the applicant’s Forms I-765, Application for Employment Authorization, dated March 21, 2001 and April 20, 2002, respectively, filed by the applicant as an alien with a pending asylum application;
3. a photocopies of Employment Authorization Cards valid from June 25, 2001 to June 24, 2002 and June 25, 2002 to June 24, 2003, respectively, indicating that the applicant had a pending asylum application; and,
4. an affidavit dated July 31, 2004, from [REDACTED] stating that he has known the applicant since February 7, 2001.

The record indicates that the applicant’s husband, [REDACTED] filed a Form I-589, Request for Asylum in the United States, with the Immigration and Naturalization Service, now CIS, on February 3, 1993, as an American Baptist Church (ABC) v. Thornburg Settlement Agreement class member under CIS registration number [REDACTED]. On March 19, 2001, Mr. [REDACTED] requested that his wife and children be added to his asylum application.

On April 19, 2003, the applicant’s asylum application was withdrawn, and the proceeding terminated, at her request. The record confirms that the applicant was granted employment as an alien with a pending asylum application for the periods from June 25, 2001 to June 24, 2002, and from June 25, 2002 to June 24, 2003.

CIS records indicate that the applicant has resided, and been physically present, in the United States since March 21, 2001. However, the applicant has submitted only an affidavit from Mr. [REDACTED] (No. 4 above) to establish her qualifying continuous residence and continuous physical presence in the United States prior to that date. The applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the residence and physical presence requirements 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.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.