



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **OCT 04 2005**

[EAC 01 185 52918]

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, Vermont Service Center. The matter was remanded by the Director of the Administrative Appeals Office (AAO), and was subsequently reopened and denied again by the Director, Vermont Service Center. The matter is now before the 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 initially denied the application on March 6, 2003, after determining that the applicant had abandoned her application by failing to respond to a request for evidence dated May 11, 2002. The applicant was informed that there is no appeal from a denial due to abandonment, but she could file a motion to reopen and reconsider within 30 days of the issuance date of the denial decision.

On April 17, 2003, more than 33 days after the issuance date of the denial decision, the applicant filed a Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU). The applicant stated that her attorney failed to keep her informed of correspondence from Citizenship and Immigration Services (CIS), including the Request for Evidence dated May 11, 2002. She submitted additional evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The director erroneously accepted the Form I-290B as an appeal and forwarded the appeal to the AAO.

The director of the AAO remanded the matter for further consideration and action on December 18, 2003, because the AAO has no jurisdiction over TPS applications denied due to abandonment.

On April 27, 2004, the service center director reopened the matter and 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, 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. 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, with the latest extension granted 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 to September 9, 2002. The record reveals that the applicant filed her TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on April 20, 2001.

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 initially submitted a photocopy of a money transfer receipt dated [unknown] 12, 2000, in support of her TPS application.

On May 11, 2002, the applicant was requested to submit additional evidence to establish her 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, therefore, denied the TPS application on March 6, 2003. The director informed the applicant that there is no appeal from a denial due to abandonment, but she could file a motion to reopen and reconsider within 30 days of the issuance date of the denial decision.

The applicant responded to the denial decision on April 17, 2003, more than 33 days after the date of the denial decision. The applicant submitted the following evidence:

1. a photocopy of a State of Maryland birth certificate indicating that [redacted] was born to the applicant on July 21, 2002;
2. a billing statement dated February 28, 2002, from [redacted] and,

3. a letter dated February 28, 2002, from the applicant's former attorney informing her of her scheduled fingerprint appointment.

The director erroneously accepted the applicant's motion to reopen and reconsider as an appeal and forwarded it to the AAO. On December 19, 2003, the director of the AAO remanded the matter back to the service center director for further consideration and action, because the AAO has no jurisdiction over denials due to abandonment.

On April 27, 2004, the service center director reopened the matter and 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, the applicant states that she entered the United States prior to February 13, 2001, and has lived in the "Baltimore Metropolitan area of the State of Maryland since on or before March 9, 2001." She submits the following evidence:

4. an affidavit dated May 3, 2004, from [REDACTED], stating that he is the applicant's brother and that she arrived in the United States on August 17, 2000, and has resided and been physically present in this country since that date;
5. an affidavit dated May 5, 2004, from [REDACTED] Pastor of [REDACTED] Baltimore, Maryland, stating that she has known the applicant since January 1, 2001, when the applicant began attending services in her church;
6. a letter dated May 5, 2004, from the applicant to her former attorney dismissing his services because she was not satisfied with his representation;
7. a photocopy of a money transfer receipt dated December 30, 2000; and,
8. a photocopy of the applicant's 2003 Internal Revenue Service (IRS) Form 1040EZ1, Income Tax Return for Single and Joint Filers With No Dependents.

The Maryland birth certificate (No. 1 above), the LabCorp billing statement (No. 2 above), the letter from the applicant's former attorney (No. 3 above), the letter from the applicant to her former attorney (No. 6 above), and the applicant's 2003 federal income tax return (No. 8 above) do not establish the applicant's qualifying continuous residence and continuous physical presence because they are dated after the requisite periods to establish continuous residence and continuous physical presence. The money transfer receipt (No. 7 above) predates the requisite periods.

The affidavit from Pastor [REDACTED] (No. 5 above) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not provide the address where the applicant resided during the period of her involvement with the church. The affidavit from Mr. [REDACTED] the applicant's brother, is not sufficient to establish the applicant's qualifying

continuous residence and continuous physical presence in the United States during the requisite periods. The applicant claims to have lived in the United States since August 17, 2000. It is reasonable to expect that she would have some type of contemporaneous documents to corroborate this affidavit; however, no such evidence has been provided. Without corroborative evidence, affidavits are not sufficient to establish an applicant's qualifying continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(2)(i) and (v).

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.

Beyond the decision of the director, the applicant has not provided an official Salvadoran photo identification document to establish her identity and nationality as set forth at 8 C.F.R. § 244.9(a)(1). Therefore, the application also must be denied for this reason.

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.