



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: DEC 07 2008

[WAC 05 216 72581]

IN RE:

[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, Chief
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 claims to be 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 had failed to establish that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, counsel submits a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General 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 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial application on May 4, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

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).

In a Notice of Intent to Deny dated February 5, 2006, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence to establish nationality and identity, and evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. In response, counsel asserts that the applicant is eligible for TPS because she is the child of an alien [redacted] file number [redacted] who has been approved TPS. She submits a copy of [redacted] Form I-821, Application for Temporary Protected Status, stamped "approved" by the California Service Center on February 4, 2003, and a copy of Form I-797C, Notice of Action, advising [redacted] that her TPS application [re-registration], filed on May 12, 2005, has been granted. The applicant, in this case, has established that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(iv).

The record of proceeding also contains Form I-213, Record of Deportable/Inadmissible Alien, indicating that on August 26, 2003, the applicant was encountered by the Service agents after having entered the United States without inspection, approximately 29 miles west of the Calexico, California Port of Entry. At that time, she stated that she is a citizen of El Salvador, and that she left El Salvador on or about August 5, 2003, via bus to Guatemala and continued through Mexico where she entered the United States illegally. She was subsequently released to her mother [redacted]. On April 4, 2005, in San Francisco, California, the

Immigration Judge administratively closed removal proceedings upon submission of evidence of TPS registration by the applicant.

The director noted that the applicant had indicated on her TPS application that her date of entry into the United States was August 27, 2003; therefore, she has failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The director, therefore, denied the application on April 12, 2006.

On appeal, counsel states that the applicant was born in El Salvador on January 24, 1986, and that she was just seventeen years old at the time she entered the United States without inspection on August 27, 2003. Citing various case law permitting imputation of a parent's "lawful unrelinquished domicile" and "continuous residence" to the unemancipated minor child, counsel asserts that [REDACTED] continuous physical presence and continuous residence in the United States should be imputed to the applicant for the time that she was an unemancipated minor. He further asserts that there is no logical reason to refuse to impute the continuous physical presence and continuous residence accrued by the applicant's mother to the applicant.

The applicant is applying for Temporary Protected Status under section 244 of the Act. The case law cited by counsel relates to aliens who are lawful permanent residents, seeking asylum, under removal proceeding, suspension of deportation or cancellation of removal, and does not relate to the applicant's case. Counsel's assertion that the applicant qualifies for TPS since arriving on August 27, 2003, based on her mother's "lawful unrelinquished domicile" and "continuous residence" is not persuasive. As stipulated in section 244(c), above, the Attorney General designated the dates required to establish continuous residence and continuous physical presence as February 13, 2001, and March 9, 2001, respectively. The applicant, in this case, was not present in the United States during the requisite period required to establish continuous residence and continuous physical presence. The Administrative Appeals Office is bound by the clear language of the statute and lacks the authority to change the statute. Further, the statute did not provide for a waiver of continuous residence and continuous physical presence requirements.

The applicant has failed to establish that she has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, it is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also 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.