

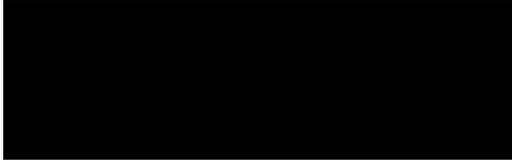
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FILE:



Office: Nebraska Service Center

Date:

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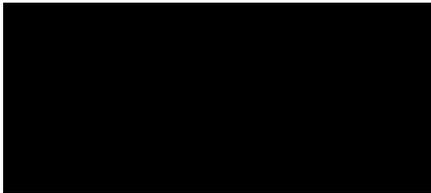
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, Nebraska 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 her “residence since February 13, 2001”, and her continuous physical presence in the United States since March 9, 2001.

On appeal, counsel, on behalf of the applicant, asserts the applicant’s claim of eligibility for TPS and submits evidence in support of her claim.

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.

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 by the Secretary of the Department of Homeland Security, 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 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).

On February 4, 2004, the applicant was requested to submit evidence establishing her "residence in the United States since February 13, 2001", and her continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted the following documentation:

- 1) A copy of a wire transfer request dated October 12, 2000;
- 2) An unsigned copy of a Consumer Account Application from the Wells Fargo Bank of Minnesota bearing a date of September 23, 2000;
- 3) A copy of a birth certificate of the applicant's son born on October 28, 2002, in Minnesota; and,
- 4) A copy of a Western Union money transfer receipt dated August 31, 2001.

The director determined that the applicant had failed to submit evidence establishing her residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. Therefore, the director denied the application on March 31, 2004.

On appeal, counsel provides the following documentation in support of the applicant's claim of eligibility for TPS:

- 5) Copies of statements of accounts from the Wells Fargo Bank dated September 28, 2000, February 28, 2001, and March 27, 2001;
- 6) Copies of receipt notices dated August 22, 2001 and November 27, 2002;
- 7) Copies of the birth certificates of the applicant's children born on October 28, 2002 and March 25, 2004, in Minnesota;
- 8) Copies of the applicant's Internal Revenue Service (IRS) Form W-2, Wage and Tax Statements, for the years 2002 and 2003; and,
- 9) Copies of her Employment Authorization cards reflecting validity dates of January 2, 2002 to September 9, 2002, September 10, 2002 to September 9, 2002, and January 13, 2004 to March 9, 2005.

The copies of the Statements of Accounts as detailed in No. 5, above, bear the name of [REDACTED] and the applicant. It is noted that although the applicant's name appears on the account, the submitted evidence does not reflect whether the applicant had used the account to substantiate her presence in the United States. Also, a review of the Consumer Account Application from the [REDACTED] Minnesota, as detailed in No. 2 above, is not signed and reflects the applicant's address as: [REDACTED] El Salvador." The money wire transfer request, as detailed in No. 1 above, pre-dates the requisite time periods for TPS. In addition, the remaining evidence post-dates the beginning of the qualifying time periods for continuous residence and continuous physical presence. 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 continuous residence and continuous 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 TPS 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.