



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



MA

FILE: [REDACTED]
[LIN 03 269 50583]

Office: NEBRASKA SERVICE CENTER

Date: MAY 04 2006

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: 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.

Cindy N. Gomez for
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 sustained.

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, the applicant submits additional documentation.

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. Subsequent extensions of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with the latest granted 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 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 submitted the following evidence with her Form I-821, Application for Temporary Protected Status:

1. a photocopy of a pay statement from Excel Corp for the pay period ending January 6, 2001;
2. a photocopy of a pay statement from ConAgra Foods, Inc., for the pay period ending March 6, 2000;
3. a photocopy of a Uniform Residential Appraisal Report relating to a house purchased by the applicant and her husband in April 2000; and,
4. photocopies of Employment Authorization Cards issued to the applicant based on her pending asylum application valid from June 14, 1999 to June 13, 2000; June 13, 2000 to June 13, 2001; and April 28, 2003 to April 27, 2004.

On October 15, 2003, 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 applicant was also requested to provide proof that [REDACTED] and [REDACTED] are one and the same person. The applicant, in response, provided proof that her maiden name is "[REDACTED]" and she married [REDACTED] in Marshall, Missouri, on November 13, 1998. She also provided the following evidence:

5. photocopies of pay statements from Excel Corporation for the pay periods ending July 14, 2001 and August 4, 2002;
6. a photocopy of the applicant's 2000 Internal Revenue Service (IRS) Form W-2. Wage and Tax Statement, reflecting an annual income of \$5306.75 from her employment for ConAgra Foods, Inc.; and,
5. a photocopy of the applicant's 2000 IRS Form W-2 reflecting an annual income of \$15,446.97 from her employment for Excel Corporation.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on December 17, 2003.

On appeal, the applicant submits the following:

6. a letter dated December 30, 2003, from [REDACTED], stating that she first became acquainted with the applicant when the applicant's children attended St. Peter's Catholic School with her grandson during the 2000-2001 school year;
7. photocopies of canceled personal checks, signed by the applicant and dated: July 29, 2002; September 27, 2002; October 30, 2002; November 25, 2002; December 4, 2002; January 26, 2003; August 26, 2003; September 16, 2003; October 14, 2003; and, October 27, 2003;

8. a photocopy of a Notice of Initial Determination of Status as an Insured Worker from the Division of Employment Security, Missouri Department of Labor and Industrial Relations dated July 27, 2001.;
9. a photocopy of a pay statement from Excel Corporation for the pay period ending September 15, 2002; and,
10. a photocopy of a generic cash receipt in the amount of \$50 for "sustaining fees."

Additionally, the record indicates that the applicant has been including in her husband's pending application for asylum and for withholding of removal as a class member in the American Baptist Church v. Thornburg Settlement Agreement. The applicant's husband, [REDACTED], filed his asylum application on April 10, 1999. The record indicates that the applicant has applied for, and been granted, employment authorization cards based on her pending asylum application, from June 14, 1999 through April 27, 2004.

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 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 withdrawn, the application will be approved, and the appeal will be sustained.

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained.