



U.S. Citizenship
and Immigration
Services

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MJ

[REDACTED]

FILE:

[REDACTED]
[WAC 04 255 52885]

Office: CALIFORNIA SERVICE CENTER

Date: JAN 04 2007

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, 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, a minor child, is a native and citizen of El Salvador who is applying for 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 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 designated by the Attorney General 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 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. 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 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 record reveals that the applicant was apprehended by the United States Border Patrol near Bisbee, Arizona, on April 25, 2004, in a van loaded with 18 other undocumented aliens. The applicant initially claimed to be a Mexican citizen and admitted that she had entered the United States without inspection near the Naco, Arizona, port of entry. The applicant agreed to return to Mexico voluntarily in lieu of removal proceedings. Mexican immigration officials subsequently returned her to the custody of the United States Border Patrol, stating that she was a citizen of El Salvador, not Mexico. The applicant admitted to the officers that she left El Salvador by bus on the evening of March 12, 2004, traveled through Guatemala and Mexico, and entered the United States without inspection by crawling through the barbed wire border fence east of the Naco Port of Entry on April 24, 2004.

The applicant was placed in removal proceedings, and an Immigration Judge in Phoenix, Arizona, ordered her removed to El Salvador in absentia on September 8, 2004, when she failed to appear for her removal hearing. On December 8, 2004, the judge granted the applicant's subsequent motion to reopen the removal proceeding and her removal hearing was re-scheduled.

The applicant filed her TPS application on September 17, 2004, and an Immigration Judge in Los Angeles, California, administratively closed the applicant's removal proceeding on March 22, 2006, because she had a pending TPS application.

The director noted that the applicant did not enter the United States until April 24, 2004, and denied the application on March 23, 2006, because the applicant cannot establish continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant asserts that she qualifies for late initial registration because she was in removal proceedings from April 24, 2004 through March 22, 2006. She submits another copy of the Immigration Judge's order dated March 22, 2006, a photocopy of the biographic page of her Salvadoran passport, and a photocopy of her immunization record.

In order to qualify for late initial registration under the provision of 8 C.F.R. § 244.2(f)(2), the applicant must provide evidence that during the initial registration period, she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above. In this case, the applicant did not enter the United States until 2004, and she did not fall within any of the provisions described in 8 C.F.R. § 244.2(f)(2) **during the initial registration period for Salvadorans**. Furthermore, late initial registration does not relax the other TPS eligibility requirements set forth at 8 C.F.R. § 244.2.

The applicant was not physically present in the United States from March 9, 2001 through April 24, 2004. Therefore, she cannot establish that she has met the physical presence requirement described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for TPS for this reason will be affirmed.

Beyond the decision of the director, the applicant was not residing in the United States during the period from February 13, 2001 to April 24, 2004. Therefore, she cannot establish continuous residence in the United States during the requisite period, as set forth at 8 C.F.R. § 244.2(c). Furthermore, as previously stated, the applicant also does not qualify for late initial registration as set forth at 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for these reasons.

It is noted that the applicant currently has a pending asylum application. It is further noted that the record contains a warrant of removal issued by the District Director, Phoenix, Arizona, on September 8, 2004, when she was initially ordered removed in absentia by the Immigration Judge in Phoenix, Arizona.

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.