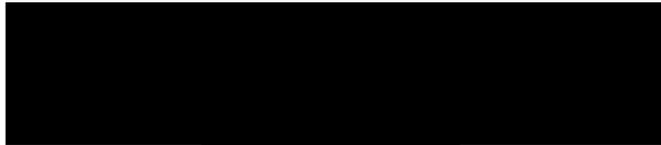




U.S. Citizenship  
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invasion of personal privacy**



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FILE:



OFFICE: SAN FRANCISCO

DATE: JAN 24 2007

[WAC 01 264 57464]

IN RE:

Applicant:



APPLICATION:

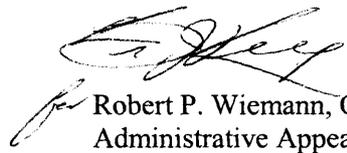
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, San Francisco, California, 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 district 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 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 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 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).

The record shows that the applicant filed her TPS application on June 20, 2001. In a notice of intent to deny dated November 15, 2003, the applicant was requested to submit: (1) evidence to establish that she had continuously resided in the United States since February 13, 2001; (2) evidence to establish that she had been continuously physically present from March 9, 2001, to the date of filing the application; and (3) the final court dispositions of all of her arrests, including her arrest listed on the Federal Bureau of Investigation fingerprint results report.

In response, the applicant submitted evidence in an attempt to establish continuous residence and continuous physical presence. She also submitted police and court documents relating to her arrest on June 11, 2002, for "sell/etc liquor to minor," 25658(a) B&P, a misdemeanor, indicating that the applicant was granted adult diversion [an alternative to criminal prosecution], which she successfully completed on March 21, 2003, and that "no charges filed" with the court. The record indicates that the applicant was not convicted of this misdemeanor offense.

The district director, however, noted that the applicant entered the United States on March 23, 2001, as a B-2 visitor in Los Angeles, California, and determined that the applicant had failed to establish continuous residence and continuous physical presence in the United States. The district director, therefore, denied the application on December 28, 2004.

On appeal, the applicant states that she returned to the United States after a brief visit to her country. She asserts that she first entered the United States on December 22, 2000, and that she left the United States on or about March 9, 2001.

The applicant's assertions are not persuasive. CIS records and database indicate that the applicant was issued a B1/B2 nonimmigrant visitor's visa in San Salvador, El Salvador, on November 29, 2000. The applicant was admitted to the United States as a B-2 visitor at Los Angeles, California, on December 22, 2000. On January 30, 2001, the applicant departed from the United States and returned to El Salvador. On March 23, 2001, the applicant was again admitted to the United States at Los Angeles. While the applicant stated that she "returned to the United States after a brief visit to her country," the applicant, instead, "returned to her country after a brief visit to the United States."

As stipulated in section 244(c) of the Act [see above], the Attorney General designated the dates required to establish continuous residence as of February 13, 2001, and continuous physical presence since March 9, 2001. 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 record indicates that the applicant entered the United States on March 23, 2001; therefore, she could not have 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 district director's decision to deny the application 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 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.