



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[EAC 04 002 54406]

Office: VERMONT SERVICE CENTER

Date: JUN 05 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts the applicant's claim of eligibility for TPS.

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 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 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. An extension of the program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. 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).

On October 24, 2003, the applicant was requested to submit evidence establishing her residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. A copy of a laboratory invoice from [REDACTED] dated September 7, 2003, and bearing the applicant's name as patient;
2. Copies of receipts dated August of 2003 and bearing the applicant's name;
3. Copies of medical prescriptions dated June of 2002, February, March, May, June, July, and September of 2003 and bearing the applicant's name as patient;
4. A copy of an invoice from [REDACTED] dated July 21, 2003, and bearing the applicant's name as patient;
5. A copy of a receipt from [REDACTED] dated June 10, 2003, and bearing the applicant's name as patient; and,
6. A copy of a prescription receipt dated March 19, 2003, and bearing the applicant's name as patient.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 27, 2004.

On appeal, counsel asserts that the applicant is married to a TPS registrant and is therefore eligible for TPS as a late registrant. Counsel does not submit any evidence on appeal.

The applicant has not submitted any evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Counsel addresses an issue on appeal that has already been decided. The issue in the instant case is whether the applicant has submitted sufficient evidence to establish her continuous residence and continuous physical presence in the United States since February 13, 2001. Contrary to counsel's assertions, while regulations may allow spouses of aliens who are TPS-eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS as detailed in 8 C.F.R. §§ 244.2(a) through (e). The applicant has not submitted any evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

It is noted that the record of proceeding shows that border patrol agents apprehended the applicant as she illegally entered the United States on February 27, 2002. This fact makes it impossible for her to establish her continuous residence and physical presence in the United States during the requisite time periods. 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.