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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

File: [redacted] [LIN 02 182 50333] Office: Nebraska Service Center Date: JAN 07 2004

IN RE: Applicant: [redacted]

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

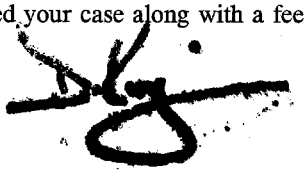
ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. The case was subsequently reopened on motion at the Nebraska Service Center, and the decision of the director was not reversed. The case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador who indicated on her application that she entered the United States without a lawful admission or parole in 1991. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish she had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant reasserted her claim of eligibility and submitted additional 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 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 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 under section 244.3;

(e) is not ineligible under 8 C.F.R. § 244.4; and

(f) (1) registers for TPS during the initial registration period, or

(2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:

(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.

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 entry on or prior to February 13, 2001, 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 Homeland Security, with validity until March 9, 2005, 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 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).

In support of her initial application, the applicant provided the following documentation:

1. A copy of a receipt for a money order apparently purchased by the applicant on July 8, 1995;
2. A copy of an Arkansas Medicaid Program identification card issued to the applicant on August 2, 1995;
3. A copy of a certificate from the St. Edward Mercy Medical Center, Fort Smith, Arkansas, certifying the birth of the applicant's son there on December 12, 1995;
4. A copy of an "Evidence of Insurance - State of Arkansas" card issued to the applicant on August 1, 1996;
5. Copies of money orders from the applicant to Maria Francisca Alvarengo dated March 28, 1997, August 1, 1997, and October 3, 1999;
6. A copy of a 1998 Form W-2, Wage and Tax Statement, issued to the applicant by TEC, The Employment Company;
7. A copy of a pay-stub issued to the applicant by an unnamed employer for the period ending February 13, 1999;
8. A copy of a hand-written receipt for rent dated April 4, 1999;
9. A copy of a certificate from the White County Memorial Hospital, Monticello, Indiania, certifying the birth of the applicant's daughter there on July 29, 1999;
10. A copy of her Indiana Operator Driver License issued to the applicant on July 9, 2001;
11. A copy of a certificate from the White County Memorial Hospital, Monticello, Indiania, certifying the birth of the applicant's daughter there on September 25, 2001; and,
12. A copy of the applicant's monthly statement from the Northern Indiana Public Service Co. for residential gas service from March 7, 2002, through April 8, 2002;

On July 2, 2002, 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 record does not contain a response from the applicant.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on October 28, 2002. On motion to reopen, the applicant reasserted her claim and submitted the following

documentation:

13. A letter dated November 26, 2002, from David C. Homback who stated that the applicant had been his tenant since February 12, 2001; and,
14. A copy of a bill dated March 1, 2001, for water service from Monon Utilities, Monon, Indiana.

The director reopened the case, but affirmed his previous decision to deny the application. On appeal, the applicant submitted the following documentation:

15. An account printout from an unnamed source bearing a hand-written note stating that the applicant had "been a customer since September 2, 2000";
16. Copies of the applicant's monthly statements from the Northern Indiana Public Service Co. for residential gas service from December 8, 2000, through March 7, 2001;
17. A hand-written receipt for rent dated February 12, 2001; and,
18. An undated account printout relating to the applicant's residential water service.

The applicant has submitted sufficient evidence to establish that she has met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the director's decision will be withdrawn and the application will be approved.

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 met this burden.

ORDER: The appeal is sustained.