U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Texas Service Center Date: OCT 22 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 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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Texas 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 she had: 1) entered the United States prior to February 13, 2001; 2) continuously resided in the United States since February 13, 2001; and 3) been continuously physically present in the United States since March 9, 2001. The applicant had indicated that she did not enter the United States until December 2001.

On appeal, the applicant submits a statement and 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 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 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.

(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. 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 the Department 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 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 applicant initially submitted the following documentation:

1. A copy of her birth certificate with English translation;
2. A copy of her marriage certificate dated February 29, 2000; and,
3. A copy of her cedula.

On June 27, 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 was also requested to submit evidence that she was eligible for late registration. The applicant, in response, provided the following documentation:

4. A copy of her spouse's Form 1040A U.S. Individual Income Tax Return for 2002;
5. A copy of her spouse's Employment Authorization Card with an expiration date of September 9, 2002;
6. A copy of a car insurance policy in her spouse's name dated July 1, 2003;
7. An affidavit from [redacted] stating that the applicant worked for her from December 2001 to the present; and,
8. Copies of six generic rent receipts from December 1, 2001 through May 1, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on July 29, 2003. The director noted that the applicant indicated on her application that she entered the United States on December 6, 2001.

On appeal, the applicant states that it would be a hardship if she did not get permission to remain in the United States because she is expecting a child in 2003, and also has a husband and daughter here in the United States. The applicant also appears to assert on appeal that she is eligible for TPS because her spouse has been granted TPS. However, while Bureau regulations may allow spouses of TPS beneficiaries to file their applications after the initial registration period has closed; these regulations do not relax the requirements for eligibility for TPS. The applicant is not eligible for TPS because, by her own admission, she arrived in the United States subsequent to the eligibility period. Therefore, the director's decision to deny the application for temporary protected status will be affirmed.

The applicant submits the following documentation on appeal:

9. Copies of her medical records relating to her pregnancy for various dates in 2003.

While the applicant has submitted evidence of her continuous physical presence and residence for 2002 and 2003, she has not submitted any evidence to establish her qualifying residence in the United States since February 13, 2001, or her physical presence in the United States since March 9, 2001. She has, therefore, failed to establish

that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the applicant has failed to establish her eligibility for late registration. Therefore, the application must also be denied for this reason.

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.