

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M1

[REDACTED]

FILE: [REDACTED]
[EAC 01 190 54451]

Office: Vermont Service Center

Date: APR 15 2005

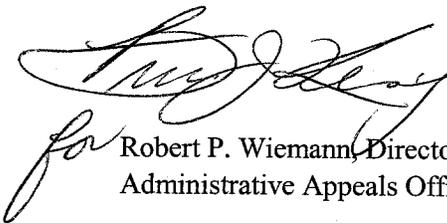
IN RE: Applicant: [REDACTED]

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.


for Robert P. Wiemann, Director
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 her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing his application.

On appeal, the applicant submits a statement regarding her eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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.

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 September 9, 2006, 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 March 27, 2002, the applicant was requested to submit the final court dispositions regarding her arrest on May 14, 1996, by the Riverhead, New York Police Department, for Endangering Welfare of a Child and Harassment (Agency Case [REDACTED]). In addition, she was requested to provide evidence showing whether the charge for which she was convicted was classified as a felony or misdemeanor. In response, the applicant submitted a letter dated April 12, 2002, from the Justice Court Clerk in Riverhead, New York, indicating the charges and dispositions for the above arrest. The letter indicates that the charges were dismissed and the case was closed on January 9, 1997. The director determined, however, that the applicant failed to provide the necessary documentation to determine the final dispositions of each charge against her; thus, the director denied the applicant on May 2, 2002.

The applicant filed a motion to reopen her application on March 20, 2003. The director approved the motion and requested additional documentation on August 8, 2003. The applicant was requested to submit evidence establishing her continuous residence in the United States as of February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. In response, the applicant submitted some evidence in an attempt to establish her continuous residence and continuous physical presence in the United States during the requisite time periods. The director, however, determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on October 20, 2003.

On November 24, 2003, the applicant filed an appeal which is now before the AAO. On appeal, the applicant states that she has been in the United States since February 1996. The applicant also submits the following documentation along with her appeal: a letter dated November 17, 2003, from [REDACTED] who stated that the applicant had been employed by Ivy Acres in Baiting Hollow, New York, from March 2001 to August 2001; and a printout of the applicant's earnings from Ivy Acres reflecting paychecks dated March 30, 2001 to August 24, 2001.

The letter from [REDACTED] and the record of the applicant's earnings from Ivy Acres postdate the requisite time periods for continuous residence or continuous physical presence in the United States. The earliest check date as indicated on the printout is March 30, 2001. In addition, [REDACTED] does not state the specific date in which the applicant began her employment. In addition, the record of proceedings contains a letter dated August 22, 2003, from [REDACTED] Vice President of Altaire Pharmaceuticals, Inc., who stated that the applicant had been an employee of her company since August 21, 2001. The applicant does not have evidence in support of her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

8 C.F.R. § 244.9, states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 [REDACTED])

(i) Passport;

(ii) Birth certificate accompanied by photo identification;
and/or

(iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish that she is a national or citizen of El Salvador. Each application must be accompanied by evidence of the applicant's identity and nationality. Acceptable evidence may consist of a passport, a birth certificate accompanied by photo identification; and/or any national identity document from the alien's country of origin bearing photo and/or fingerprint. 8 C.F.R. § 244.9(a)(1). The applicant has provided a copy of her birth certificate, along with an English translation; however, she has not provided photo identification. Therefore, the application will 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.