

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



FEB 18 2005

FILE:

[WAC 01 190 50234]

Office: CALIFORNIA SERVICE CENTER

Date:

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:

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
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 applying for 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 qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The director also found that the applicant had failed to respond to a request for evidence, and therefore, had not overcome the grounds for denial.

On appeal, counsel 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 applicant 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 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 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.
- (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. 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 initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant, while living in California, filed her initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on April 17, 2001.

The burden of proof is upon the applicant to establish that 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On March 19, 2004, the applicant was requested to submit evidence establishing 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 Notice of Intent to Deny specified types of evidence that, pursuant to the regulations at 8 C.F.R. § 244.9(a), might be used to establish continuous residence and continuous physical presence for purposes of obtaining the TPS benefit. The record does not contain a response from the applicant or counsel.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on August 18, 2004.

On appeal, counsel asserts that the applicant was only required to prove her physical presence from February 13, 2001, to the filing date, and states that: "The application, the translation of the Salvadoran ID, and counsel's G-28 [Notice of Entry of Appearance as Attorney or Representative of Record], should have sufficed to prove the applicant's physical presenc [sic] since February 13, 2001." Counsel notes that the applicant had submitted a California Identification Card, and had been issued employment authorization in 1995. Counsel states that the applicant was unaware of the Notice of Intent to Deny because it had been mailed to counsel's office, and not to the applicant's home address that had changed from Los Angeles, California, to Hyattsville, Maryland. In support of the appeal, counsel submits a CIS receipt notice for the applicant's Form I-765, Application for Employment Authorization, dated September 11, 2003, that was mailed to the applicant's Maryland address. Counsel also submits a photocopy of a Southern California Gas Company, Monterey Park, California, billing statement in the name of [REDACTED] for the period November 20, 2000 through December 20, 2000.

The record also includes the following documentation:

1. A copy of the applicant's Employment Authorization document (EAD) under Category C8 (pending asylum), with validity from January 24, 1995, through January 24, 1996;
2. A copy of the applicant's California Identification Card issued on June 13, 1994, with expiration on September 28, 1999;
3. A photocopy of the applicant's birth certificate, with English translation;
4. A photocopy of the applicant's El Salvadoran cedula dated December 31, 1989; and,
5. Photocopies of the applicant's Form I-589, Request for Asylum in the United States, filed on October 14, 1993.

The applicant has not provided sufficient credible evidence to establish her qualifying continuous residence and continuous physical presence during the requisite time periods. The items listed above at Numbers 1, 2, and 5, provide evidence of the applicant's presence in the United States during the early to mid-1990's, but do not establish her continuous residence and continuous physical presence during the requisite period for this TPS application. It is noted that the records of CIS reflect a gap in the applicant's record from the mid-1990's through the issuance of the employment authorization, valid under Category C19 (pending TPS), that was first issued on August 8, 2001. Other than the statements of counsel, and the applications, which in and of themselves do not prove continuous residence and continuous physical residence, the only supporting evidence submitted to establish the applicant's continuous residence and continuous physical presence in the United States during the required dates is a copy of a Southern California Gas Company, Monterey Park, California, billing statement for the period November 20, 2000, through December 20, 2000. The record does not contain other contemporaneous evidence relating to the requisite periods. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, the

assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Therefore, the applicant has not established that she has met the provisions of 8 C.F.R. § 244.2(b) and (c), and the denial of the application is affirmed.

It is also noted that counsel's assertion is not persuasive that the Notice of Intent to Deny was improperly served on counsel, when CIS was aware that the applicant had provided a residential address in another state on her 2003 re-registration application. Pursuant to the regulation at 8 C.F.R. § 292.5:

Service upon and action by attorney or representative of record.

- (a) *Representative capacity.* Whenever a person is required by any of the provisions of this chapter to give or be given notice; to serve or be served with any paper other than a warrant of arrest or a subpoena; to make a motion; to file or submit an application or other document; or to perform or waive the performance of any act, such notice, service, motion, filing, submission, performance, or waiver shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented.

In this instance, the record contains a properly executed Form G-28, and does not contain notice of withdrawal as attorney or representative from counsel or from the applicant.

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.