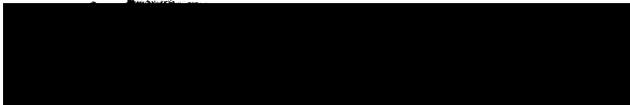




U.S. Citizenship
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MI

FILE: [REDACTED]
[WAC 04 170 51954]

Office: CALIFORNIA SERVICE CENTER

Date: **JUL 29 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 continuous residence in the United States since February 13, 2001.

On appeal, the applicant 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 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 § 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.
- (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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid 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 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 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).

The applicant initially submitted a photocopy of "The Baby News" from The Patient Care Center in Las Vegas, Nevada, dated March 11, 2004; a medical release form from the Clark County Health District dated December 2, 2003; and, a photocopy of the applicant's Las Vegas marriage certificate dated July 1, 1995. The applicant's husband, [REDACTED] stated in a letter dated May 12, 2004, that the applicant has been in the United States since 1992, but has not worked since her arrival in the United States. Mr. [REDACTED] explained that the applicant was expecting their first child and needed work authorization in order to get a Social Security card and receive health insurance through her husband's place of employment.

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence in the United States during the requisite period and denied the application on August 9, 2004.

On appeal, the applicant submits the following:

1. photocopies of her husband's Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, for the years 2000, 2001, 2002, and 2003;
2. a photocopy of a 2003 "Combined Tax Statement" from [REDACTED] Las Vegas, Nevada;
3. a photocopy of her husband's ADP pay statement dated "01/04/2001;"
4. photocopies of IRS Forms 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, filed jointly by the applicant and [REDACTED] for the years 2000 through 2003; and,
5. a photocopy of a receipt from Quest Diagnosing in Las Vegas, Nevada, dated June 19, 2004.

The IRS Forms W-2, and the ADP pay statement do not establish the applicant's qualifying continuous residence in the United States since February 13, 2001, because they pertain to Mr. [REDACTED] employment. The IRS Forms 1040EZ filed (No. 4 above) alone are not sufficient to establish the applicant's qualifying continuous residence in the United States since February 13, 2001. The only documents submitted in the applicant's name are the medical release form dated December 2, 2003, the "Baby News" letter dated March 11, 2004, and the receipt from Quest Diagnosing dated June 19, 2004 (No. 5 above). The applicant claims to have lived in the United States since 1992. It is reasonable to expect that the applicant would have some contemporaneous evidence to support the income tax returns for the years 2001 to 2004; however, no such evidence has been provided.

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 her qualifying continuous residence in the United States throughout the requisite period. Therefore, the applicant has not satisfied the residence requirement described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish continuous physical presence in the United States since March 9, 2001. Therefore, the applicant has not meet the continuous physical presence requirement described in 8 C.F.R. 244.2(b), and the application also must be denied for this reason.

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.