

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M1

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: MAR 02 2005

[WAC 01 220 51259]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, and continuous physical presence in the United States since March 9, 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. A subsequent extension of the TPS designation has been granted by 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).

The applicant indicated on the Form I-821, Application for Temporary Protected Status, that she entered the United States on March 9, 2001.

The director, therefore, determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time frames and denied the application on March 5, 2004.

On appeal, the applicant states that she is submitting evidence that she is the beneficiary of an approved I-130, Immigrant Petition for Relative, Fiance(e), or Orphan, and she has now filed a Form I-485, Application to Adjust Status to Register Permanent Residence or to Adjust Status. She submits a Form I-797C approval notice indicating that [REDACTED] is the beneficiary of an approved Form I-130 petition filed on her behalf by her sister [REDACTED] under CIS receipt number WAC 97 047 52103. She also submits a letter dated April 13, 2004, from [REDACTED], O.A.R., Prefect of Students at Augustinian Recollects, St. Augustine Priory, in Oxnard, California. [REDACTED] states that that he was assigned to the seminary in August 2000, and since he arrived he has become friends with the applicant. He further states that it is his understanding that she has been attending mass at the seminary since 1998. Finally, she submits a letter from [REDACTED], her sister, dated March 17, 2004, informing the National Visa Center in Portsmouth, New Hampshire, of her sister's address change.

The record contains a photocopy of several pages from the applicant's Salvadoran passport, containing U.S. admission stamps. It appears from this document that the applicant first entered the United States on April 8, 1998. There is a second U.S. admission stamp dated December 23, year illegible. Finally, there is a U.S. admission stamp dated March 9, 2001. The record also contains a photocopy of a Form I-94, Arrival/Departure Record, indicating that the applicant was last admitted to the United States at Los Angeles, California, on March 9, 2001, with stay authorized to September 9, 2001. There are also two Salvadoran immigration stamps dated April 12, 1998 and January 4, 1999, respectively. Although the applicant was clearly in the United States in 1998, she has entered and departed the United States at least once since her arrival on April 8, 1998. The record confirms that she last entered the United States on March 9, 2001. Therefore, she cannot establish continuous residence in the United States since February 13, 2001.

The I-130 approval notice is not sufficient to establish the applicant's continuous residence or continuous physical presence in the United States during the requisite time frames. An alien is not required to be present in the United States in order to be the beneficiary of a Form I-130 petition. In fact, the record clearly shows that she departed the United States and returned on March 9, 2001.

The only other evidence the applicant has submitted in an attempt to establish her continuous physical presence in the United States since March 9, 2001, is the letter from [REDACTED]. The letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. Finally, the letter is not in the form of an affidavit.

The applicant claims to have lived in the United States since 1998. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support the letter from [REDACTED] 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 that she satisfies the residence and 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.

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.