

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

PUBLIC COPY

M1



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAY 05 2005

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: 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
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 sustained.

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 physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement and copies of evidence previously submitted for incorporation into the record of proceeding.

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 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 evidence in an attempt to establish her qualifying continuous residence and physical presence in the United States:

1. her Salvadoran passport issued by the General Consul of El Salvador in Washington, D.C., on December 31, 1998;
2. a State of California birth certificate indicating that Rene Ivan Castro was born to the applicant and [REDACTED] March 4, 1995;
3. a Commonwealth of Virginia birth certificate indicating that [REDACTED] was born to the applicant and [REDACTED] also a citizen of El Salvador, on September 4, 1996;
4. a Commonwealth of Virginia birth certificate indicating that [REDACTED] was born to the applicant and [REDACTED] on June 30, 1998; and,
5. a State of California birth certificate indicating that [REDACTED] was born to the applicant and [REDACTED] on March 3, 2000.

On October 15, 2002, the applicant was requested to submit evidence establishing her qualifying continuous residence and physical presence in the United States. The applicant, in response, provided the following:

6. a Las Americas Express money transfer receipt indicating the applicant transferred money to El Salvador on February 15, 2001;
7. a form letter dated September 6, 2002 from [REDACTED] Principal of Martin Elementary School, Santa Ana Unified School District, Santa Ana, California, indicating that [REDACTED] date of birth March 4, 1995, enrolled at Martin Elementary School on July 6, 2000;
8. a school history form indicating [REDACTED] left Martin Elementary School on June 28, 2002;
9. a form letter dated September 6, 2002, from Ms. [REDACTED] stating that [REDACTED] date of birth September 4, 1996, enrolled at Martin Elementary School on September 9, 2001; and,
10. a school history form indicating [REDACTED] left Martin Elementary School on June 28, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on February 24, 2003.

On appeal, the applicant repeats her claim to have lived in this country since July 3, 1993. She submits copies of her children's California and Virginia birth certificates.

The director noted that the applicant had not provided any evidence to establish her continuous physical presence in the United States from March 9, 2001 through September 9, 2001, the date her filing fee was processed. The director, therefore, determined that the applicant had not established her continuous physical presence in the United States since March 9, 2001. It is noted that the applicant's Form I-821, Application for Temporary Protected Status, was initially received at the California Service Center on August 17, 2001, not on September 9, 2001.

The applicant has provided letters from Martin Elementary School indicating that two of her children, Rene and Erik, attended that school from July 6, 2000 and July 9, 2001, respectively, through June 28, 2002. Pursuant to 8 C.F.R. § 244.9(a)(2), proof of residence and physical presence may include school records (letters, report cards, etc.) from the schools that the applicant or his or her children have attended in the United States showing name of school and period(s) of school attendance [8 C.F.R. § 244.9(a)(2)(iii)] and birth certificates of children born in the United States [8 C.F.R. § 244.9(a)(vi)(C)]. Therefore, the birth certificates and school attendance records submitted by the applicant with the initial application and in response to the director's request for additional evidence will be accepted as evidence of the applicant's continuous residence in the United States. The school attendance documents submitted by the applicant indicate that her children attended Martin Elementary School until June 28, 2002.

It is determined that the documentation submitted by the applicant is 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 is withdrawn. The appeal will be sustained, and the application will be approved.

It is noted that the record of proceeding contains documentation reflecting that the applicant was ordered deported in absentia on February 11, 1994, under file number [REDACTED]

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained.