



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: NOV 30 2005

[EAC 03 241 51562]

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, 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 that she had continuously resided in the United States since February 13, 2001.

On appeal, counsel resubmits documents previously furnished and asserts that the evidence clearly shows that the applicant has resided continuously in the United States.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The record shows that the applicant filed her TPS application on August 9, 2003. In a notice of intent to deny dated September 8, 2003, the applicant was requested to submit evidence to establish that she was eligible for late registration, and evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application.

The director noted that, in response, the applicant submitted evidence that satisfies her eligibility for late initial registration,² and continuous physical presence in the United States since March 9, 2001. She determined that the applicant, however, failed to submit evidence to establish that she had continuously resided in the United States since February 13, 2001, and denied the application on April 7, 2004.

On appeal, counsel submits copies of receipts under the name of [REDACTED] (the applicant's spouse) dated April 1999, July 1999, and August 1999. He also submits:

1. Copies of letters from Jamaica Hospital Medical Center in New York advising the applicant of a scheduled prenatal appointment on April 19, 2001.
2. A copy of an Enrollment Agreement with Zoni Language Center, Inc. signed by the applicant on July 8, 2001, and receipt for payments dated July 8, 2001 and August 13, 2001.
3. Copies of medical cards under the applicant's name dated June 1, 2001, and an undated New York State Benefit Identification Card.

¹ The director erroneously cited in his decision the dates Hondurans and Nicaraguans are required to establish continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999.

² The applicant submitted copies of her marriage certificate and her husband's Employment Authorization Card (Category A12) as evidence that she is eligible for late registration as set forth in 8 C.F.R. § 244.2(f)(2)(iv) because she is the spouse of an alien granted TPS.

4. A copy of the New York birth certificate of the applicant's daughter indicating a birth date of December 3, 2001.

The record, as presently constituted, does not contain any evidence to establish that the applicant has continuously resided in the United States since February 13, 2001, until April 2001 (No. 1 above). The applicant indicated on her TPS application that she entered the United States on December 21, 2000, at "JFK, New York" as a visitor. The applicant could have furnished evidence that she did, in fact, enter and was admitted into the United States on that date.

The applicant has failed to establish that she has met the criteria for continuous residence in the United States since February 13, 2001. 8 C.F.R. § 244.2(c). Additionally, although the director stated that evidence furnished was sufficient to satisfy the applicant's continuous physical presence in the United States since March 9, 2001, it is noted that no documentation was furnished to establish continuous physical presence subsequent to the birth of her daughter on December 3, 2001 (No. 4 above), to the date she filed her application on August 9, 2003. Therefore, the applicant also has failed to establish that she has met the criteria for continuous physical presence in the United States since March 9, 2001. 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.