

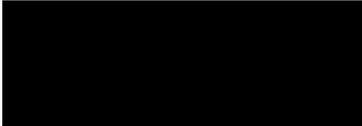
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

SEP 29 2005

[SRC 03 256 55935]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 she continuously resided in the United States since February 13, 2001 and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant states:

I have evidence that my husband is under the TPS and that I am a qualified applicant under him to also get the work permit and be under the TPS protection. I did not get the notice that advised me to send my evidence that would establish my relationship to my husband. This is the only reason why I was denied my application. I am now sending a certified copy of the marriage certificate whereby I show evidence that I am indeed [REDACTED] wife, I am also sending affidavits of people that give witness that I satisfied the dates of physical presence and residence evidence. I am also sending a copy of my Salvadorian passport and also my husband's copies of his work permit, SS card, and driver's license. Please let me know if I can reapply on January again in case you don't reach a decision by that time. I would like to apply with my husband when it is time for him to renew his work permit.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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.

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. An extension of the TPS designation has been granted 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.

The applicant indicates on her Form I-821, Application for Temporary Protected Status signed August 8, 2003 that she entered the United States on February 3, 2002. Additionally, the Form I-862, Notice to Appear, ordering her to appear before an immigration judge dated February 3, 2002 carries the allegation by the Patrol Agent in Charge of the Rio Grande City, Texas Border Patrol Office that "You arrived in the United States at or near Roma, Texas, on or about February 3, 2002." The record reflects that the applicant failed to honor that notice and did not appear before an immigration judge on April 17, 2002 to answer to or overcome that specific allegation. As the provisions of 8 C.F.R. § 244.2(b) and (c) have not been met, the director's decision to deny the application for TPS is affirmed.

It is noted on April 18, 2002, an Immigration Judge in Houston, Texas ordered the applicant removed from the United States after she failed to appear for her hearing. The Acting District Director of the Houston, Texas office of the Immigration and Naturalization Service, now CIS, issued a Warrant of Removal/Deportation dated July 12, 2002 for her arrest.

An alien applying for TPS 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.