



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



M1

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: MAY 25 2006
[SRC 04 031 53985]

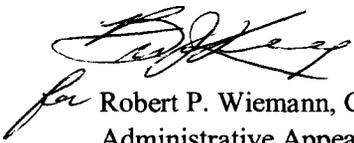
IN RE: Applicant: [Redacted]

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.


for Robert P. Wiemann, Chief
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 applying for 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 resided in the United States since February 13, 2001.

On appeal, the applicant states:

I was arrest for Border Patrol on 4/29/2001, but I was retain for some persons in the border, because they wants money and I don't had was in the United States since November/2000, but I escape from this guy on middle of April and the border patrol arrest on ends of April. Please give me opportunity to establish her in legally, my last son born in the USA, reconsider the decision, and let me grown in this country.

As stated in the regulations at 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reflects that the applicant filed a Form I-821, Application for Temporary Protected Status during the initial registration period. That application was denied on July 22, 2003, on the basis of abandonment because the applicant had failed to respond and provide the evidence that the director requested in his notice of intent to deny dated May 27, 2003. An application that is denied for abandonment cannot be appealed, however, the applicant could have filed a motion within 30 days of the denial. The applicant did not file a motion during the requisite timeframe. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on November 7, 2003. Since the initial application was denied on July 22, 2003, the subsequent application cannot be considered as a re-registration. Therefore, this application shall be considered as new filing for TPS benefits.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General 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.
- (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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. An extension of the TPS designation has been granted by the Secretary of 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 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 record shows that the applicant filed this TPS application on November 7, 2003. The applicant indicated on that application, on her first I-821 and on all of her Forms I-765, Application for Employment Authorization, that she entered the United States on April 29, 2001, subsequent to the eligibility period.

On appeal, the applicant states that she had been in the United States since November 2000.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated April 29, 2001 indicating that the United States Border Patrol apprehended the applicant after she illegally entered this country by wading across the Rio Grande River approximately ¼ mile east of the Eagle Pass, Texas Port of Entry. She admits to leaving El Salvador on April 8, 2001 to travel to the United States and then entering this country on April 29, 2001.

The record shows that the applicant claims eligibility for late initial registration based on her husband's I-821 approval. While regulations allow the spouse or child of a TPS beneficiary to file an application after the initial registration period, these regulations do not relax the requirements for eligibility for TPS. The applicant is required to meet the continuous residence and continuous physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). None of the evidence presented by the applicant establishes her continuous residence since February 13, 2001 and her continuous physical presence from March 9, 2001. Therefore, she cannot satisfy the continuous residence and continuous physical requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS is affirmed.

The record reflects that on June 19, 2002, the applicant was ordered to be removed from the United States to El Salvador by an Immigration Judge in San Antonio, Texas. A Form I-205, Warrant of Removal/Deportation dated August 31, 2002, was issued by the District Director in San Antonio, Texas.

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.