

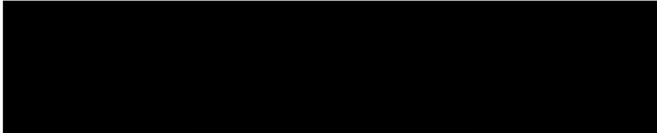


U.S. Citizenship
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Services

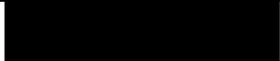
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FILE:



Office: VERMONT SERVICE CENTER

Date: APR 20 2007

[EAC 01 231 61349 Form I-821]
[EAC 05 013 50798 Form I-290B]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn. The case will be remanded for further consideration and action.

The applicant claims to be 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 her continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

On appeal, the applicant submits a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, the latest 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 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The applicant filed her initial Form I-821, Application for Temporary Protected Status, on July 23, 2001. In support of her initial application, the applicant submitted:

1. A translation of her El Salvadoran birth certificate, with no original; and,
2. A photocopy of a letter, dated January 3, 2001, from the Prince George's County Public Schools, Upper Marlboro, Maryland, showing the results of the applicant's Maryland Functional Reading Test.

On May 23, 2003, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The record reflects that the applicant failed to respond to the request.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on October 17, 2003.

On appeal, the applicant apologizes for not having responded to the director's request for evidence. In support of the appeal, the applicant submits documentation including:

3. A photocopy of her Social Security card, # [REDACTED]
4. A photocopy of her Annual Secondary Performance Dad Summary, Grades Nine to Twelve, issued by the Maryland Pupil Data System. The document indicates that she attended Bell Senior High for grade nine (the 1998-1999 school year), and Northwestern High for grades ten through twelve (the 1999-2000, 200-2001, and 2001-2002 school years);
5. A photocopy of a letter, dated April 7, 2003, issued to her by La Moda Tax Service, Washington, D.C.;
6. An uncertified photocopy of her Internal Revenue Service (IRS) 2002 Form 1040, U.S. Individual Income Tax Return; and,
7. A photocopy of her IRS 2002 Form W-2, Wage and Tax Statement.

Based on a review of the record, it is concluded that the applicant has provided sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, to the date of filing her TPS application on July 23, 2001. Therefore, the decision of the director to deny the application on these grounds will be withdrawn.

It is noted, however, that the applicant has failed to submit sufficient evidence to establish her identity and nationality in accordance with the provisions of 8 C.F.R. § 244.9(a)(1). Furthermore, the applicant indicated on her Form I-821 that she had been placed under immigration proceedings in Los Angeles in July 1998. The reason(s) for those proceedings is not contained in the record. Therefore, the case will be remanded to the director for consideration and discussion of all issues pertinent to this case. The director may request any

additional evidence he considers pertinent. Similarly, the applicant may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the director is withdrawn. The case is remanded to the director for further consideration and action.