



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

FILE:

[EAC 02 155 51469]

Office: VERMONT SERVICE CENTER

Date: MAY 31 2007

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, Chief  
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; and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts the applicant's claim of eligibility for TPS.

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 program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. Subsequent extensions of the TPS designation have been granted with the latest extension valid until September 9, 2007, 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).

On April 21, 2006, the applicant was requested to submit evidence establishing her continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on July 3, 2006.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS and submits the following documentation:

1. Copies of the applicant's pay statements from [REDACTED] dated October of 2005 through June of 2006;
2. Copies of income tax records for the 2005 tax year;
3. Copies of the applicant's pay statements from [REDACTED] dated June through December of 2003, and January through April of 2004;
4. A copy of a receipt from [REDACTED] dated July of 2003;
5. A copy of an invoice bearing the applicant's name and dated April 2, 2002;

6. A copy of a medical report from [REDACTED] dated June 3, 2001 and bearing the applicant's name as the newborn's mother;
7. A copy of a progress report from [REDACTED] Hospital concerning the applicant's newborn dated September 16, 2001;
8. A copy of the applicant's admissions report from [REDACTED] Hospital with an admission date of June 3, 2001 and a discharge dated for the newborn of September 6, 2001;
9. Copies of progress reports dated September and October of 2001;
10. Copies of doctor's notes from [REDACTED] M.D. bearing the applicant's name and dated February and May of 2002, and January of 2003;
11. A copy of a medical report from [REDACTED] Hospital bearing the applicant's newborn's name and dated January 23, 2002;
12. A copy of an earnings statement bearing the applicant's name as employee and dated October 11, 1997;
13. A copy of the applicant's child's birth certificate [REDACTED] issued in Elizabeth, New Jersey, and dated June 3, 2001; and,
14. A copy of the applicant's child's birth certificate [REDACTED] issued in Elizabeth, New Jersey, and dated October 20, 1997.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Although the applicant has submitted evidence to establish her residence and physical presence in the United States since June of 2001, there is no evidence in the record of proceeding to demonstrate her whereabouts from February 13, 2001 to May 31, 2001. In the absence of this evidence, the applicant does not qualify for TPS.

The applicant has failed to establish that she has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

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.