

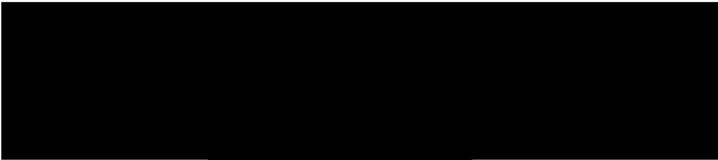
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



FILE:

[EAC 0125755081]

Office: VERMONT SERVICE CENTER

Date:

JAN 23 2008

INRE:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vennont Service Center (VSC), withdrew the approval of the application. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.c. § 1254.

The director withdrew approval of the application because he determined that the applicant left the United States and failed to establish her qualifying continuous residence and continuous physical presence.

On appeal, the applicant asserts that she left due to a death in the family and provides supporting documentation. The applicant also asserts that she provided the information about her departure in her initial application.

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 as 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 section 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.
- (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 (t)(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 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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest extension granted until March 9, 2009, upon the applicant's re-registration during the requisite time period.

The burden of proof is on 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).

The record reflects that the applicant filed her initial TPS application on August 20, 2001 – during the initial registration period for Salvadorans. In Part 2 of the application, the applicant indicated that her last date of entry into the United States was March 20, 2001. Attached to her application, the applicant included an explanation about her entry. The applicant stated that she first entered the United States in April 1998. She resided here and was continuously physically present until about February 11, 2001, when she left the United States due to a family-related emergency. The applicant traveled to El Salvador. On March 20, 2001, she returned to the United States and attempted to enter without inspection. She was apprehended at the border and was placed in removal proceedings. She subsequently applied for TPS. In support of her application, the applicant submitted telephone bills dated January 11, 2000, through May 10, 2001.

On May 22, 2003, the director approved the applicant's TPS application.

The applicant subsequently filed a re-registration application. On August 16, 2005, the director informed the applicant of the intended withdrawal of the approval of her application and requested that the applicant submit additional evidence to show that she had met the residence and physical presence requirements of the TPS regulations. In response, the applicant submitted a letter from her employer, dated August 24, 2005, stating that the applicant had worked there since April 1, 1998; telephone bills dated May 11, 1999, through September 10, 2000; and a gas bill dated July 23, 1999. On September 15, 2006, the director denied the application, finding that the applicant had not overcome the decision to withdraw approval of the application because she had failed to establish her qualifying continuous residence and continuous physical presence.

On appeal, the applicant asserts that she traveled to El Salvador on February 12, 2001, and returned to the United States on March 21, 2001. She submits additional documentation, including photocopies of her mother's Salvadoran death certificate, indicating that she died on February 11, 2001; and documentation relating to her apprehension at the border in 2001.

The phone bills reflect that the applicant resided at _____ Clifton, Massachusetts, from at least May 11, 1999, through May 10, 2001, and that she maintained her accounts open during that time. This includes the period of time she traveled to El Salvador. An original letter, dated August 24, 2005, from the applicant's employer, on company letterhead, corroborates the applicant's employment at that location, beginning in 1998. _____, identified as the Controller at Dunn & Co., Inc., the Book Trauma Center, issued the employment letter. Ms. _____ states that the company had employed the applicant in its bindery department since April 1, 1998. The applicant has renewed her Employment Authorization Documents and filed re-registration applications as necessary from 2001 to the present. Together, these documents establish that the applicant continuously resided in the United States since February 13, 2001, and was continuously physically present since March 9, 2001. Consequently, the applicant has submitted sufficient evidence to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

The record reflects that the applicant has resided in the United States since 1998 and that she left in 2001 long enough to deal with a family emergency. On appeal, the applicant explains that her mother was taking care of her children and that she brought back one her sons with her to United States after her mother's death. Service records corroborate the fact that the applicant was apprehended at the border with her son. The applicant disclosed her absence and the circumstances surrounding her apprehension at the border in her initial application. With this knowledge, CIS approved her application. The death certificate of the applicant's mother corroborates the reason for the applicant's travel to El Salvador. Together with the documents that establish her continuous residence and physical presence, this document establishes that the applicant's departure from the United States was brief, casual, and innocent. There is no indication in the record of any new facts to contradict the applicant's initial assertions. The director's decision to withdraw the approval of the application is therefore withdrawn.

An applicant for TPS has the burden of proving that he or she meets the requirements listed above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The appeal is sustained and the application is approved.