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U.S. Citizenship
and Immigration
Services



FILE: [Redacted]

Office: VERMONT SERVICE CENTER

Date: 4/10/12

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, Director
Administrative Appeals Office

Identifying data deleted to
prevent disclosure and
invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits a brief statement.

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.

On March 9, 2001, the Attorney General designated El Salvador for TPS. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. The Secretary of the Department of Homeland Security granted a subsequent extension of that designation, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002.

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 record reflects that the applicant filed her initial Form I-821, Application for Temporary Protected Status, on August 30, 2002. At the time of filing her application, the applicant indicated that she had last entered the United States without inspection in September 1999.

On November 7, 2002, the applicant was requested to submit evidence that she had established a residence in the United States as of February 13, 2001, and had been physically present in the United States from March 9, 2001, to the date of filing her application. In response, the applicant submitted photocopies of receipts from Giant Express, Miami, Florida, dated October 22, 2000 and November 22, 2000; and, receipts from Global Express Money Orders, Inc., dated September 26, 2001; May 14, 2002; and June 13, 2002.

The director determined that the evidence submitted by the applicant was insufficient to establish that she had been continuously physically present in the United States since March 9, 2001, to the date of filing her application. The director denied the application on May 1, 2003.

On appeal, the applicant indicates that she never received a notice to submit additional evidence in support of her application. The applicant has not submitted any additional evidence in support of her appeal.

The applicant claims to have lived in the United States since September 1999. It is reasonable to expect that she would have contemporaneous evidence, beyond the receipts submitted, to support this claim, such as employment, school, hospital, and medical records, bank account and insurance statements, or other correspondence and documentation as described in 8 C.F.R. § 244.9.

It is noted that the photocopies of receipts provided by the applicant appear to have been altered. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

It is determined that the documentation submitted by the applicant is insufficient to establish that she satisfies the continuous physical presence requirements described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that the director determined that the applicant had submitted evidence concerning her "establishment of a residence within in the United States, prior to February 13, 2001." This portion of the director's decision will be withdrawn. Based on a review of the record, the AAO concludes that the applicant has failed to submit

sufficient evidence to establish that she satisfies the continuous residence requirements described in 8 C.F.R. § 244.2(c).

An alien applying for temporary protected status has the burden of proving that 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.