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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: DEC 07 2004

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.

for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated 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 acting director denied the application because the applicant failed to establish that she had continuously resided in the United States since February 13, 2001, and failed to establish that she had been continuously physically present in the United States since March 9, 2001.

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

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 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 (f)(2) of this section.

The issues raised by the acting director to be addressed in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and whether she has been continuously physically present in the United States since March 9, 2001.

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.

El Salvadorians applying for TPS must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

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. 8 C.F.R. § 244.9(a). The sufficiency of all evidence, however, 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).

In a notice of intent to deny, dated April 14, 2003, the applicant was requested to submit evidence establishing her continuous physical presence in the United States since March 9, 2001, and her continuous residence in the United States since February 13, 2001. The applicant was also requested to submit evidence to show that she is a citizen or national of El Salvador.

The acting director found that the applicant, in her response to the notice of intent to deny, submitted evidence to demonstrate that she is a national of El Salvador. However, the acting director found that the applicant failed to provide evidence to demonstrate her continuous residence and her continuous physical presence in the United States during the requisite timeframes. The acting director denied the application on November 14, 2003.

On appeal, the applicant, in pertinent part, states:

I sent my third registration and it was returned, telling me I had been denied. I never received a denial. I am a housewife, but my approved TPS spouse and I lived with family and we have no rent receipts. Since I was undocumented I have no additional proof. I would like to have TPS as the spouse of a tps [sic] person. I have registered before all deadlines and cannot understand why you denied me, [sic] over and about that. I cannot provide stubs or records because I used [sic] to live with other people. What little my husband and I were earning was enough to subsist [sic], but I was working doing some housecleaning occasionally [sic], money that I used to call and send to my children for support.

The Service acknowledges the applicant's request to be considered for TPS as the "spouse of a tps [sic] person." However, the applicant is not entitled to be considered for TPS as the spouse of an alien currently eligible to be a TPS registrant. This status is only applicable to those aliens who filed a TPS application after the initial registration period had closed, but were eligible for TPS during the initial registration period as the spouse of an alien currently eligible to be a TPS registrant. The applicant filed her TPS application on July 13, 2002, which was during the specific registration period and, therefore, cannot be considered as a TPS applicant filing for late registration.

The applicant submits a letter, dated October 31, 2003, from [REDACTED] who states that the applicant is his sister-in-law, and that he has known her since March 2000 when she came to the United States. The applicant submitted another letter, dated October 31, 2003, from Noel Horkan, who states that he has known the applicant since April 2000, and that she was referred to him as a "house cleaning person."

The evidence submitted on appeal is not sufficient in establishing that the applicant has continuously resided in the United States since February 13, 2001, and that she has been continuously physically present in the United States since March 9, 2001. The affidavits, without supporting documentary evidence, are not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft*

of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The acting director's decision to deny the application for temporary protected status will be affirmed.

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.