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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



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FILE:



Office: VERMONT SERVICE CENTER

Date: NOV 08 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 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 determined that the applicant failed to establish she had: 1) continuously resided in the United States since February 13, 2001; 2) been continuously physically present in the United States since March 9, 2001; and 3) provided the final disposition of every charge against her. The director, therefore, denied the application.

On appeal, the applicant asserts that she has been in the United States since May 1998. The applicant provides additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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).

The record shows that the applicant filed her TPS application on March 27, 2002. On May 7, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing of the application. The applicant was also requested to submit the final disposition of every charge against her. The applicant failed to respond to the request. Therefore, the director denied the application.

On appeal, the applicant states she has been physically present in the United States since May 1998. In support of this claim, the applicant submits the following:

1. A copy of a receipt dated February 14, 2000, an invoice dated March 15, 2000, and an invoice dated December 29, 2001.
2. A "Certificate to Return to Work or School" dated March 6, 2000.
3. Statements [REDACTED]
4. A copy of a Referral for Surgery/Invasive Procedure dated January 30, 1999.

The January 30, 1999 referral, the February 14, 2000 receipt, the March 6, 2000 certificate, and the March 15, 2000 invoice indicate the applicant was present in the United States on those specific dates prior to the qualifying dates for establishing continuous residence and continuous physical presence. The December 27, 2001 invoice indicates the applicant was in the United States on that specific date subsequent to the qualifying dates for establishing continuous residence and continuous physical presence. Therefore, the documents fail to establish the applicant's continuous residence and continuous physical presence during the qualifying period and are of no probative value.

The statements from [REDACTED] are virtually identical. The affiant in each statement claims to have known the applicant since May 1998, and that she has remained in the United States from that date to the present time. The statements, however, are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence.

The applicant has not submitted any evidence to establish that he has met the criteria for residence and physical presence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The applicant was also requested on May 7, 2003, to submit the final disposition of all her arrests. The Federal Bureau of Investigation (FBI) fingerprint results report shows the following:

1. Arrested on September 21, 1998, in New York, for prostitution 2nd offense. The FBI report shows that the applicant was convicted of this offense. However, the final court disposition of this arrest is not contained in the record.
2. Arrested on February 28, 2000, in New York, for prostitution. The FBI report shows that the applicant was convicted of this offense. However, the final court disposition of this arrest is not contained in the record.
3. Arrested on August 3, 2000, in New York, for prostitution. The FBI report shows that the applicant was convicted of this offense. However, the final court disposition of this arrest is not contained in the record.

The applicant failed to comply with the director's request to submit the final disposition of the above arrests, and of every charge against her. These arrests and/or convictions may render the applicant ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act, based on inadmissibility to the United States pursuant to section 212(a)(2)(D) of the Act for prostitution, and as an alien convicted of a felony or two or more misdemeanors committed in the United States. The applicant, however, failed to comply with the director's request to submit the final court dispositions of her arrests. Therefore, the director's decision to deny the TPS application on this ground will also 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.