



U.S. Citizenship
and Immigration
Services

MI

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

1/14

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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.

Cynthia Gomez fo
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: 1) had continuously resided in the United States since February 13, 2001; and 2) had been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel for the applicant asserts that the applicant has complied with all terms of the Act and is prima facie eligible for TPS benefits. Counsel also submits additional evidence.

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).

On March 21, 2003, the applicant was provided the opportunity to submit evidence establishing her continuous residence since February 13, 2001, and continuous physical presence from March 9, 2001 to the filing of the TPS application. The applicant, in response, provided a statement from [REDACTED] who claimed that he has known the applicant since 2000. According to [REDACTED], he first met the applicant when she inquired about a room he had for rent in his home in 2000. The applicant states that, "to the best of my knowledge," the applicant has not left the United States [REDACTED] statement is not supported by any corroborative evidence. The director, therefore, denied the application.

On appeal, counsel states that the applicant is eligible for TPS. According to counsel, the applicant is a hard-working individual, working two full-time jobs to support her family in El Salvador. Counsel asserts that depriving the applicant of immigration benefits is a violation of due process because the documentary guidelines are too ambiguous and would be catastrophic for the applicant and her dependent family in El Salvador. Counsel's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above.

On appeal, the applicant provides a personal statement, as well as statements from Cantalicio Gamarra, Maria Mendoza, and Oscar Anaya. The applicant also submits a copy of a Western Union money transfer receipt dated September 23, 2000.

In her statement, the applicant states that she has resided continuously in the United States since April 22, 2000, and that she has never committed any crime. According to the applicant, she spends her time in this country either working, in church, or sending money home to her family in El Salvador, and that it is from these activities that she is most confident in providing documentation. The applicant claims that her failure to satisfy the

documentary requirements was through no fault of her own but due to the fact that the guidance given as to what is deemed acceptable is too ambiguous.

In his letter, dated July 28, 2003, [REDACTED] Director of Hispanic Ministry, [REDACTED] Cove, New York, states that the applicant is not well known to him personally, but that [REDACTED] a volunteer in the parish Outreach Services, vouches for her. [REDACTED] states that according to [REDACTED], the applicant has resided in the United States since February 1, 2001. [REDACTED] admits that he has no personal knowledge of the applicant regarding her continuous residence and continuous physical presence in the United States during the qualifying period. [REDACTED]' claim is not supported by any corroborative evidence. Furthermore, because he has not provided his own statement, it cannot be determined whether [REDACTED]' knowledge of the applicant's entry into the United States is independent of his personal relationship with the applicant. If this knowledge is based primarily on what the applicant told him about her entry into the United States, then his statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony.

In her letter, [REDACTED] states that the applicant, her sister, has been in the United States since April 2000 and that she and the applicant live together. However, this statement is 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 continuous residence or continuous physical presence.

Similarly [REDACTED] again states that he has known the applicant since 2000 when she inquired about a room he had for rent in his home. However, [REDACTED] also fails to provide any supporting evidence in support of this claim, i.e., rent receipts, utility bills, etc. Thus, the statement is of little or no probative value. The Western Union receipt is dated September 23, 2000. While this document indicates the applicant was present in the United States on this date, it does not establish the applicant's continuous residence from February 13, 2001 and her continuous physical presence in the United States from March 9, 2001 to the filing date of the application.

The applicant failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

The applicant has not submitted sufficient evidence to establish that she has met the criteria for continuous residence and continuous 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.

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.