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



FILE:



Office: VERMONT SERVICE CENTER

Date: SEP 28 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:



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

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

On appeal, counsel states that the applicant was unaware that she needed to submit a personal affidavit and is now submitting it on appeal. In addition to the affidavit, other documentation has been provided.

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.

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 first issue raised by the director to be addressed in this proceeding is whether the applicant has established her nationality.

An applicant is eligible for temporary protected status only if such alien establishes that he or she is a national of a foreign state designated under section 244(b) of the Act. 8 C.F.R. § 244.2(a).

8 C.F.R. § 244.9(a)(1) provides, in part:

Each application must be accompanied by evidence of the applicant's identity and nationality. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state.

The applicant claims on the application that she is a citizen of El Salvador. The applicant did not address this issue on appeal. The applicant has provided no additional documentary evidence such as a passport, a birth certificate accompanied by photo identification or any national identity document from her country of origin containing her photograph and fingerprint. The applicant has not established her nationality, therefore, the director's decision to deny the application for temporary protected status for this reason will be affirmed.

The remaining issues raised by the director to be addressed in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and 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 support of her application, the applicant provided three affidavits of persons who have personal knowledge of the applicant, and who claim that the applicant has resided in the United States from "January 2001 to Present."

On appeal, counsel provides an affidavit from the applicant which, in pertinent part, states:

I, [REDACTED] attest that I was in the United States during the entire year of 2001. I was unaware that I needed to submit an affidavit attesting to that effect. My efforts in obtaining any evidence of my physical presence in the United States during the year 2001 were fruitless.

Counsel also provides: a photocopy of the applicant's membership card from the [REDACTED] School dated "July 1, 2001 thru June 30, 2002;" a prescription label from Western Medical Pharmacy in Los Angeles, California, dated November 3, 2001; a pathology report from the Chino Valley Pathology Medical Group, in Chino, California, dated December 19, 2001; a Hematology and Urinalysis report from the [REDACTED] Group Inc., in Pomona California, dated December 19, 2001; a Cytopathology Report from US LABS The New Measure of Pathology, dated October 20, 2001; a progress report from the Department of Health Services in Los Angeles, California, dated December 19, 2001, January 23, 2002, April 10, 2002, May 6, 2002, June 10, 2002, and June 12, 2002; an evaluation report from H. Claude Hudson Comprehensive Health Center, dated January 23, 2002; and, a photocopy of a money order dated October 17, 2001, paid to the order of the Immigration and Naturalization Service.

The documentation contained in the record and the applicant's statement on appeal are not sufficient in establishing that the applicant has been continuously residing 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 majority of the applicant's documentation provided to establish her continuous residence and her continuous physical presence during the required timeframes is dated more than six months beyond the qualifying periods. Consequently, the director's decision to deny the application for temporary protected status for these reasons 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.