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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: [REDACTED]  
[EAC 01 205 53068]

Office: VERMONT SERVICE CENTER

Date: APR 07 2005

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:



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 sustained.

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; and 2) 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 service center did not adequately consider the evidence provided by the applicant. The applicant submits 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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest granted until September 9, 2006, 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 May 29, 2001. On April 28, 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 date of the application. The applicant, in response, provided a copy of her birth certificate, with English translation; a copy of a Continental Airlines passenger ticket; a copy of a B1/B2 Visa; a copy of a Form I-94, Arrival-Departure Record; and, a letter from [REDACTED]

The director determined that 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 airline ticket was issued on October 23, 2000 and shows travel from El Salvador to Washington, D.C. on December 14, 2000, and a planned return from Washington, D.C. to El Salvador on January 21, 2001. However, there is no evidence that the applicant ever left the United States. The Form I-94 Visa indicates the applicant was admitted to the United States on December 14, 2000, and was authorized to remain in the United States until June 12, 2001. Consequently, these documents indicate the applicant was present in the United States prior to the February 13, 2001 entry date.

Mr. [REDACTED] claims that he has known the applicant since her arrival in the United States on December 14, 2000, and that she has lived in the United States from that date to the present. However, Mr. [REDACTED] 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.

On appeal, counsel for the applicant states that the service center failed to properly weigh the evidence submitted by the applicant, which clearly establishes her nationality and that she has continuously resided and been physically present in the United States since February 13, 2001. The applicant provides copies of a lease agreement signed by [REDACTED] the applicant's husband, on November 6, 2000, and listing the applicant and her two children as occupants. The applicant also provides a letter from [REDACTED] Head Start Teacher at Kemp Mill Elementary School, Silver Spring, Maryland. According to Ms. [REDACTED] the applicant's daughter was in her Head Start class during the 2001-2002 school year and the applicant was heavily involved in the classroom. The applicant also resubmits evidence previously provided.

Consequently, the applicant has submitted sufficient evidence to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the director's decision will be withdrawn and the application will be approved.

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. Here, the applicant has met this burden.

**ORDER:** The appeal is dismissed.