



U.S. Citizenship  
and Immigration  
Services

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MM

FILE: [REDACTED]  
[EAC 02 247 50895]

Office: VERMONT SERVICE CENTER

Date: **AUG 15 2005**

IN RE: Applicant: [REDACTED]

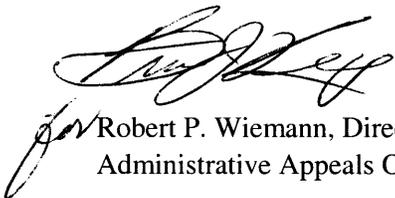
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.

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

On appeal, counsel states that the applicant arrived in the United States in October 2000. Counsel explains that at that time, she went to live with the father of her four children. Counsel further states that as he had already established a residence in Virginia, Ms. [REDACTED] does not have evidence which might show her name, address and dates in the United States. Counsel submits additional documentation in behalf of the applicant.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. An extension of the TPS designation has been granted with validity 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).

On March 31, 2004, the applicant was requested to submit evidence establishing her residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. An affidavit dated February 23, 2004 from [REDACTED] indicating that the applicant has been her daughter's baby sitter since December 2000.
2. An account statement for the period from October 1, 2003 to October 31, 2003 from the [REDACTED] Credit Union in Richmond, Virginia.
3. A rent receipt [REDACTED] dated December 3, 2000 and a copy of a rent receipt [REDACTED] dated January 5, 2001 from [REDACTED] each for \$160.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on March 31, 2004.

On appeal, counsel reasserts the applicant's claim and submits the following documentation:

4. A certificate dated January 31, 2000 from [REDACTED] of The Meadowdale Library in Richmond certifying that the applicant "has satisfactory (sic) complete (sic) the English Basics course."
5. An affidavit from [REDACTED] dated April 21, 2004 indicating that she met the applicant around Christmas, 2000 when she was living in Richmond Virginia and that the applicant lived at the same address until July 2002.
6. Copies of pay stubs from [REDACTED] and [REDACTED] Cleaners for pay periods in 2002, 2003 and 2004.
7. An envelope addressed to the applicant [REDACTED] in Richmond, Virginia from [REDACTED] in El Salvador.

Counsel states that the applicant arrived in the United States in October 2000. Counsel submits no evidence to support his assertion. It is noted that he assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

Counsel also states that the certificate listed at Item #4 above from The Meadowdale Library in Richmond, Virginia dated January 31, 2000 proves that Ms. [REDACTED] has resided in the United States before February 13, 2001. This certificate has no credibility because it is dated prior to the October 11, 2000, the date she claimed to have first entered this country. Additionally, the rent receipts listed at Item #3 above are suspect as they appear to have come from the same rent receipt book in which receipts are normally numbered consecutively. If so, then receipt [REDACTED] would have been issued after and not prior to rent receipt [REDACTED] as the month of December 2000 comes before the month of January 2001.

It is noted that affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence. In addition, the employment letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter does not provide the address where the applicant resided during the period of her employment. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

It is determined that the applicant has not submitted sufficient evidence to establish her continuous residence or continuous physical presence in the United States during the period from February 13, 2001, until early 2002. She has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

An alien applying for TPS 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.