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FILE:

[REDACTED]
[EAC 02 039 51482]

Office: VERMONT SERVICE CENTER

Date: **AUG 19 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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a 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 that 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.

On appeal, the applicant asserts her claim of eligibility for TPS.

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 October 29, 2002, 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 failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on May 6, 2003, due to abandonment.

On motion, the applicant reasserted her claim of eligibility for TPS and submitted the following documentation:

1. Copies of receipts from [REDACTED] bearing the applicant's name and dated September 21, 2001 and beyond.

The director granted the applicant's Motion to Reopen and subsequently denied the application stating that the applicant had failed to submit evidence to show that she had been continuously physically present in the United States since March 9, 2001, and continuously resided in the United States since February 13, 2001.

On appeal, the applicant reasserts her claim and submits the following documentation:

2. An affidavit from [REDACTED] of the Asamblea Apostolia in which he states that the applicant began attending church services at the church on February 6, 2001;
3. An affidavit from [REDACTED] in which he states that the applicant has been renting an apartment from him at [REDACTED] Annapolis, Maryland since November of 2000;
4. A copy of IRS Form 1040EZ for the tax years 2002 and 2003, and bearing the applicant's name and Annapolis, Maryland address; and
5. A copy of IRS Form W-2 for the tax years 2002 and 2003, bearing the McDonald's Corporation name as employer and the applicant's name as employee along with her Annapolis, Maryland address.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to October 4, 2001. The affidavit from Pastor [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)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of her involvement with the church. It is further noted that the pastor did not specify the frequency in which the applicant attends the church.

The affidavit submitted attesting to the applicant's residency in the United States since November of 2000 (No. 3 above) has little evidentiary weight or probative value. Although the affiant stated that the applicant resided with him since November of 2000, he failed to provide independent documentary evidence to substantiate the claim. A single rent receipt submitted with the initial application is insufficient to demonstrate the applicant's continuous residency in the United States during the requisite period.

The applicant claims to have lived in the United States since November of 2000, however she only submitted a rent receipt for January of 2001. It is reasonable to expect that the applicant would have additional contemporaneous evidence to support her contentions; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is noted by the AAO that the 2002 and 2003 tax documents submitted by the applicant are insufficient to demonstrate that she had established residency and physical presence in the United States since 2001.

The applicant has 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.