



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[EAC 02 256 51062]

Office: VERMONT SERVICE CENTER

Date: AUG 26 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:
[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.


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 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, counsel asserts the applicant's 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).

The applicant initially submitted the following documentation along with her TPS application:

1. A copy of the applicant's El Salvadoran passport issued to her in Washington, DC on March 1, 2002;
2. A copy of a date stamped letter dated July 22, 2002 and bearing the applicant's name and Alexandria, Virginia address;
3. An affidavit from [REDACTED] in which he stated that he has known the applicant since she came to the United States on February 1, 2001, and that she has continuously resided in the country; and,
4. A copy of a receipt from Western Union dated June 8, 2002 and bearing the applicant's name as sender.

On January 21, 2004, the applicant was requested to submit evidence establishing her continuous residence since February 13, 2001, and continuous 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 March 24, 2004.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS and submits the following documentation:

5. A letter from [REDACTED] in which she states that the applicant has been a dear friend of hers for many years; and,
6. A letter from the general manager of Royal Prestige World of Opportunity company of Falls Church, Virginia in which it is stated that the applicant was sent merchandise on January of 2001 and that she made a final payment on April 16, 2001.

The applicant has failed to submit sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The copies of the applicant's El Salvadoran passport, date stamped letter, and Western Union money receipt (Nos. 1, 2, and 4 above) demonstrate the applicant's presence in the United States in 2002, however, the evidence does not show that she was present in the country on or before February 13, 2001. [REDACTED] does not state in her letter (No. 5 above) the specific time period in which she has known the applicant, nor does she explain the origin of the information to which she attests. The letter submitted by the applicant from Royal Prestige World of Opportunity company has little evidentiary weight or probative value as it does not clarify the applicant's whereabouts during the repayment process; but rather, only clarifies that the company received payment in full for the merchandise she received.

There has been no corroborative evidence submitted to support the statement made by [REDACTED] regarding the applicant's claimed presence in the United States beginning in February of 2001. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support this assertion; however, no evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. If the affiants' 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. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence since February 13, 2001 and continuous physical presence since March 9, 2001 in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v).

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.