



U.S. Citizenship  
and Immigration  
Services

M1

identifying info related to  
previous identity information  
invasion of personal privacy

[REDACTED]

FILE: [REDACTED]  
[EAC 01 187 51874]

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. The Director granted applicant's motion to reopen, but subsequently denied the application. The case is now before the Administrative Appeals Office (AAO) 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 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 April 24, 2003, the applicant was requested to submit evidence establishing her continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant, in response, provided the following documentation:

1. An affidavit from [REDACTED] in which she stated that the applicant rented a room from her at [REDACTED] beginning January 9, 2001;
2. A copy of a medical assistance application dated February 7, 2002, and a notice of decision concerning the medical assistance dated April 8, 2002 and bearing the applicant's name;
3. A copy of a birth certificate from the State of New York naming the applicant as the mother of a child born [REDACTED];
4. Copies of utility bills dated 2002 and 2003 and bearing the applicant's name and Westbury, New York address; and,
5. Copies of earning statements dated January through May of 2003 and bearing the applicant's name and Westbury, New York address.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on June 23, 2003.

On September 15, 2003, counsel for the applicant filed a motion to reopen and reconsider the denial of the TPS application. On motion, counsel asserts the applicant's claim of eligibility for TPS and submits the following documentation:

6. An affidavit from [REDACTED] in which she states that she is the applicant's mother and that to the best of her knowledge, the applicant lives at [REDACTED] [REDACTED] has remained in the United States since January of 2001;
7. Two earnings statements dated July of 2001 and bearing the applicant's name and Westbury, New York address;
8. An affidavit from [REDACTED] of Gigante Express, Inc. in which he states that the applicant has been using their services on a monthly basis since January 8, 2001;
9. An affidavit dated July 18, 2003 from [REDACTED] in which he states that he has rented out a room to the applicant at [REDACTED] from January of 2001 to the present;
10. An affidavit from [REDACTED] in which she states that she has known the applicant since the year 2001; and,
11. Copies of IRS Form W-2 and IRS Form 1040EZ for the tax year 2001 which bear the applicant's name and Westbury, New York address.

The director granted the applicant's motion to reopen and subsequently determined that the applicant had again failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on March 29, 2004.

On appeal, counsel asserts that the applicant has primarily submitted affidavits as proof of continuous residence and continuous physical presence because she has not been in the country long enough to have accumulated other evidence. Counsel reasserts the applicant's claim of eligibility for TPS. The applicant submits the following documentation on appeal:

12. A letter from the Hispanic Ministry Apostolate, Saint Brigids Church of Westbury, New York in which it is stated that the applicant has been attending the Church's Spanish Mass every weekend since January of 2001 and has been involved in different events organized by the Parish;
13. An affidavit from [REDACTED] in which she states that she is the applicant's mother, that the applicant crossed the border from Mexico to California without inspection, that the applicant lived with her upon coming to the United States at [REDACTED] [REDACTED] until she moved to [REDACTED] September of 2001, and that the applicant has never left the United States since coming to America on January 9, 2001;
14. An affidavit from [REDACTED] in which she states that she is a friend of the applicant's and that she has known her since her arrival in New York in January of 2001;

15. A copy of a receipt showing that the applicant applied for a Social Security Card on June 13, 2001; and,
16. A letter of employment from [REDACTED] in which she states that the applicant has been employed by [REDACTED] since June 27, 2001.

The applicant has not submitted 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. There has been insufficient evidence submitted to support the statements made by the affiants regarding the applicant's claimed presence in the United States beginning in January of 2001. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient 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 them about her entry into the United States, then their statements are 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 in the United States since February 13, 2001 and continuous physical presence in the United States since March 9, 2001. 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 medical receipts, birth records, utility bills, earnings statements, and Social Security card receipt are all dated from November of 2001 through 2003, and are therefore insufficient to establish applicant's presence in the United States on or before February 13, 2001. The tax records submitted by the applicant do not show the specific time periods in which the applicant worked during the year 2001. Although the representative from Gigante Express, Inc. states that the applicant has been using the company's services since January of 2001, there have been no documents submitted to substantiate that claim. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States.

The employment letter from Extended StayAmerica Services, Inc. is not in affidavit form and 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 affiant does not provide the address where the applicant resided during the period of her employment. It is further noted that the general manager did not indicate the location of his establishment, or verify that the business was even located inside the United States.

The letter from Saint Brigid's Church 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 church representative 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.

The applicant has failed to provide an explanation for the inconsistencies that appear in the record. [REDACTED] states in her affidavit (No. 1 above) that she rented out a room to the applicant at 214 Urban Avenue beginning January 9, 2001. In contrast, [REDACTED] states in his affidavit (No. 9 above) that he rented out a room to the applicant at [REDACTED] of 2001 to the present. The applicant

claims to have lived in the United States since January of 2001. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support the assertions; 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 determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status 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.