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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[EAC 01 231 52780]

Office: Vermont Service Center

Date: JAN 18 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.

for 
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 her qualifying continuous residence in the United States during the requisite period.

On appeal, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS and submits additional documentation in support of her claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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.

The phrase *brief, casual, and innocent absence*, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 November 1, 2002, the applicant was requested to submit evidence establishing her continuous residence in the United States as of February 13, 2001. In response, the applicant submitted a single letter dated January 10, 2003, from [REDACTED] Director of the Spanish Ministry of [REDACTED] Church, in an attempt to establish her continuous residence in the United States. The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on August 28, 2003.

On appeal, counsel states that the Service did not consider all the evidence that the applicant had provided in response to the director's November 1, 2002 request. Along with the appeal, counsel provides the following documentation: copies of four hand-written rent receipts dated January 3, 2001, February 4, 2001, March 2, 2001, and April 2, 2001; a copy of a letter dated September 13, 2003 from Mr. [REDACTED] who stated that he has known the applicant since July 2000; a letter dated September 11, 2003, from Suffolk County Department of Health Services, indicating that the applicant has been a patient at the [REDACTED] Health Center West since April 3, 2001; and a copy of the previously submitted letter from [REDACTED]

The copies of the rent receipts are not supported by any other credible evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence is necessarily sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Further, the statements provided by Mr. [REDACTED] his letter indicate that he has known the applicant since July 2000, and that the applicant had "left her country to make a better life for herself and her family." Mr. [REDACTED] does not, however, indicate where he met the applicant or whether the applicant had been living in the United States since their acquaintance. In addition, his letter is not in affidavit form, nor is it notarized. Although the letter from the Suffolk County Department of Health Services states that the applicant has been a patient since April 3, 2001, this information post-dates the beginning of the requisite time period for continuous residence by almost two months.

The applicant claims to have lived in the United States since April 11, 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support her continuous residence in the United States. 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 requirements described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish her qualifying continuous physical presence during the requisite time periods. 8 C.F.R. § 244.2(b). Therefore, the application will also be denied for this reason.

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.