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Washington, DC 20529



U.S. Citizenship  
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Services

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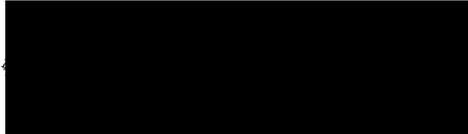
[EAC 02 295 53147]

Office: VERMONT SERVICE CENTER

Date: JUN 02 2005

IN RE:

Applicant:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 (AAO) on appeal. The appeal will be dismissed.

The applicant is stated to be 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 continuously resided in the United States since February 13, 2001, and that she had been continuously physically present in the United States since March 9, 2001. The director also found that the applicant failed to establish her nationality.

On appeal, the applicant provides a brief statement and one additional document.

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 designated by the Attorney General is eligible for temporary protected status 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record reflects that the applicant filed her application on September 9, 2002.

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 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 first issue raised by the director to be addressed in this proceeding is whether the applicant has established that she is a national of El Salvador.

An applicant is eligible for temporary protected status only if such alien establishes that he or she is a national of a foreign state designated under section 244(b) of the Act. 8 C.F.R. § 244.2(a).

In a notice of intent to deny, dated August 19, 2003, the applicant was requested to submit evidence to demonstrate that she is a national or citizen of El Salvador. The applicant was advised that such evidence may include "a copy of the biographical pages of your passport (those pages with your name, birth date, photograph, etc); a copy of your birth certificate issued by the appropriate civil authority showing timely registration, date and place of birth, and parents' names; or a copy of both sides of your National Identification Card." The applicant was also requested to submit evidence to establish her continuous residence and her continuous physical presence in the United States during the required timeframes. In response, the applicant submitted affidavits from employers and a health provider.

The director determined that the documentation provided by the applicant failed to establish that she is a national of El Salvador. The director also determined that the applicant failed to establish that she has been continuously residing and has been continuously physically present in the United States during the requisite timeframes. The director denied the application on November 21, 2003.

On appeal, in a letter dated December 4, 2003, the applicant states that she provided the Service with a copy of her birth certificate, and that she does not understand "what is going on." The applicant also states that "when your are an illegal immigrant it is very hard to open a bank account or get ID." The applicant submits a copy of the biographical page of her passport, which shows that she is a national of El Salvador.

The applicant has provided sufficient evidence on appeal to demonstrate that she is a national of El Salvador. Consequently, the applicant has overcome this portion of the director's objections.

The remaining issues raised by the director to be addressed in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001.

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.

As stated above, the director found that the affidavits presented by the applicant in response to the notice of intent to deny, dated August 19, 2003, was not sufficient in establishing the applicant's continuous residence and her continuous physical presence in the United States during the requisite timeframes. Specifically, the director stated that the affidavits "carry little evidentiary weight without additional documentation to support them." Also as stated above, the director denied the application on November 21, 2003.

On appeal, the applicant states that she provided the Service with all the evidence she had, which she thought was sufficient. The applicant also states that she believes that there is some "misunderstanding or an error in your system," as she has received her employment authorization card. Other than the aforementioned passport, the applicant provided no additional documentation, such as earnings statements, medical records and postmarked mail addressed to her at the address where it is claimed she has resided since "September, 2000, to support the affidavits contained in the record.

The record contains no substantial documentary evidence to demonstrate that the applicant has been continuously residing in the United States since February 13, 2001, and that she has been continuously physically present in the United States since March 9, 2001. As stated by the director in his decision dated November 21, 2003, the affidavits, without additional supporting documentary evidence, are not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The applicant has failed to provide sufficient evidence 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 on these grounds will be affirmed.

An alien applying for temporary protected status 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.