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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date:

JUN 29 2005

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IN RE:

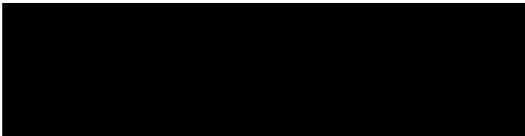
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 for the applicant 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).

The applicant initially submitted the following documentation:

1. A copy of the applicant's cedula issued on March 28, 2001 in El Salvador, and containing the applicant's signature and fingerprints;
2. A copy of an untranslated letter dated November 6, 2000; and
3. A copy of an appointment notice from the [REDACTED] Maryland, dated March 3, 2000, and bearing the applicant's name and Annapolis, Maryland address.

On October 20, 2003, 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. The applicant, in response, provided the following documentation:

4. [REDACTED] pay stubs bearing the applicant's name and dated June 16, 2001, and January 27, 2002;
5. [REDACTED] pay stub bearing the applicant's name and dated April 30, 2002;
6. [REDACTED] pay stubs bearing the applicant's name and dated June 14, 2002, October 26, 2002, and February 21, 2003, and September 19, 2003;

7. Maryland Driver's License issued to the applicant on April 29, 2003;
8. [REDACTED] bearing the applicant's name and dated July 30, 2001;
9. [REDACTED] notice of eligibility for the children's health program bearing the applicant's name and dated November 28, 2001; and
10. A copy of the applicant's daughter's Maryland birth certificate bearing the applicant's name as mother, and dated October 31, 2001;

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on March 3, 2004.

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

11. A translated Affidavit of [REDACTED] in which he states that the applicant departed El Salvador in 2000, and that her cedula was issued signed and sent to her in the United States by the municipal [REDACTED].
12. An affidavit from [REDACTED] which he states that he is a distant relative of the applicant and that he and his wife have personal knowledge of the applicants residing in Annapolis, Maryland since February of 2000; and
13. An affidavit from the applicant in which she states that she has been residing continuously in the United States since February 14, 2000, and that she was unable to obtain work authorization until 2001.

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 September 10, 2001. The two documents dated November 6, 2000, and March 3, 2000 (Nos. 2 and 3 above) are dated prior to the requisite time period for registration. The evidence submitted in response to the director's request for additional evidence suggests that the applicant had been present in the United States from June 16, 2001, to September 19, 2003; however, the affidavits submitted by counsel on appeal which reflect the applicant's residence and physical presence before June 16, 2001, are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) 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 or continuous physical presence in the United States. The applicant claims to have lived in the United States since February of 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support her claim of eligibility for TPS 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.