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U.S. Citizenship
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MAY 02 2005

[Redacted]

FILE: [Redacted]
[EAC 02 242 51966]

Office: VERMONT SERVICE CENTER

Date:

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 (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 continuously resided in the United States since February 13, 2001.

On appeal, counsel for the applicant submits a brief statement, a letter, and additional documentation.

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.
- (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.

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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, the latest granted 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 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The record reflects that the applicant filed her initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now CIS, on July 8, 2002. In support of the application, counsel submitted a photocopy of the applicant's El Salvadoran birth certificate, with English translation, and a photocopy of her El Salvadoran national identity card (*cédula*). Counsel also submitted a photocopy of a letter, dated June 16, 2002, from [REDACTED] stating that the applicant had resided at the Pioneer Motel, Inc., Catskill, New York, since October 2000.

On June 24, 2003, the director requested the applicant, through counsel, to submit evidence establishing her qualifying continuous residence in the United States since February 13, 2001. The director specifically advised the applicant that acceptable evidence might include, but is not limited to, employment or school records, rent or medical receipts, and bank or insurance documents. In response, counsel resubmitted a photocopy of the letter, dated June 16, 2002, from Ms. [REDACTED]

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and denied the application on August 20, 2003.

On appeal, counsel asserts that the applicant has proven that she has been physically present in the United States since October 2000 and clearly qualifies for TPS. In support of the appeal, counsel submits a letter, dated September 3, 2003, from Ms. [REDACTED] similar to the previously submitted photocopies of letters dated June 16, 2002. Counsel also submits a letter from the applicant's brother and sister-in-law, stating that the applicant has been in the United States since October 2000 and has taken care of their daughter every day.

The applicant claims to have lived in the United States since on or about September 8, 2000. It is reasonable to expect that she would have some sort of credible, objective evidence to support this claim; however, no such evidence has been provided. The letter from the applicant's brother and sister-in-law is not, by itself, persuasive evidence of residence or physical presence. Furthermore, the letter from Ms. [REDACTED] has little evidentiary weight or probative value as it is not in the form of an affidavit and is not supported by corroborative evidence such as rent receipts, motel records, or other such objective documentation.

It is concluded that the applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has also not submitted sufficient evidence to establish that she has been continuously physically present in the United States since March 9, 2001. Therefore, the application may also not be approved for this reason.

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.