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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

MAY 25 2005

[WAC 02 044 54106]

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.

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, the applicant asserts that she has been continuously residing in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001.

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).

In support of the initial application, the applicant provided the following documentation:

1. A translated copy of the applicant's birth certificate; and
2. A copy of a western union receipt dated August 20, 2000 with the applicant's name as sender.

On June 25, 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 States. The applicant, in response, provided the following documentation:

3. An affidavit from [REDACTED] dated July 8, 2003, in which he states that he resides in Sommerville, MA, that he has known the applicant for two years and seven months, that the applicant resides at [REDACTED] and that during her stay in the United States she has proven to be a very responsible person and good moral character and principles;

4. An affidavit from [REDACTED] dated July 7, 2003, in which he states that he resides in East Boston, MA, that he has known the applicant for two years and six months, that the applicant resides at [REDACTED] and that during her stay in the United States she has proven to be a very responsible person and good moral character and principles;
5. An affidavit from [REDACTED] dated July 8, 2003, in which she states that she resides in East Boston, MA, that she has known the applicant for two years and seven months, that the applicant resides [REDACTED] and that during her stay in the United States she has proven to be a very responsible person and good moral character and principles; and
6. A copy of the applicant's employment authorization card which authorized her employment from January 4, 2002 to September 9, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on February 5, 2004. The director stated that the documents submitted by the applicant in response to the Notice of Intent to Deny were insufficient to establish continuous residency or continuous physical presence.

On appeal, the applicant asserts that she came to the United States to live with her husband and that he initially paid all of the bills, including the rent, and that she submitted all of the documents that she had in her possession in response to the director's Notice of Intent to Deny. The applicant also asserts that she did not work in the United States until after she received work authorization. On appeal, the applicant submits the following documentation:

7. An affidavit from [REDACTED] dated February 23, 2004, in which he states that he is the applicant's husband and that she arrived in the United States on December 19, 2000, and has continued to reside in the country;
8. A letter from South Shore Hospital dated June 4, 2002, informing the applicant of her eligibility for free medical care;
9. A birth certificate showing that [REDACTED] was born to the applicant and [REDACTED] in Massachusetts on April 7, 2003.
10. Rent receipts made out to [REDACTED] and the applicant from [REDACTED] and dated February 1, 2001, [REDACTED] March 1, 2001, [REDACTED] June 1, 2001, [REDACTED] August 1, 2001, [REDACTED] November 1, 2001, [REDACTED] and January 1, 2002, [REDACTED]

The applicant has not submitted sufficient evidence to establish her qualifying residence or physical presence in the United States during the period from February 13, 2001, and March 9, 2001, to October 18, 2001. The affidavits submitted by the applicant in response to the Notice of Intent to Deny are insufficient to establish qualifying residency or physical presence. Although the affiants stated that they knew the applicant, there has been no detailed information or supporting documentation submitted to substantiate their relationship. Further, the three affidavits are identical in content except for a difference in names. The evidence detailed in Nos. 8 and 9 above is not relative to the period in

question. The rent receipt numbers are out of sequence in comparison to the dates issued. There is no corroborating evidence to support the husband's affidavit.

The applicant has failed 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 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.