

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MI



FILE: [REDACTED]
[EAC 02 270 51333]

Office: VERMONT SERVICE CENTER

Date: NOV 02 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: 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 (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, and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits a brief statement 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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid 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 applicant filed her initial Form I-821, Application for Temporary Protected Status, on August 21, 2002. In support of the application, the applicant submitted evidence of her nationality and identity. She also submitted the following:

1. An affidavit, dated July 27, 2002, from [REDACTED] stating that the applicant had been living at his residence since December 2000; and,
2. An affidavit, dated August 18, 2002, from [REDACTED] stating that he had known the applicant since November 2000.

On May 22, 2003, the director requested the applicant to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted:

3. An affidavit, dated June 9, 2003, from [REDACTED] stating that the applicant had been living, with her, since arriving in the United States before and after February 13, 2001;
4. A letter, dated June 9, 2003, from [REDACTED] Inc., Chantilly, Virginia, stating that the applicant had been employed since November 18, 2002;
5. An affidavit, dated June 18, 2003, from [REDACTED] stating that he had worked with the applicant in December 2000;
6. A Gigante Express receipt, dated July 19, 2002;
7. A photocopy of a Western Union Money Transfer receipt, dated April 13, 2003;
8. Photocopies of envelopes addressed to her in Montgomery Village, Maryland, with no (or incomplete) postmarks;
9. Photocopies of her 2002 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement;
10. A photocopy of a letter to her, dated May 2, 2003; and,
11. Photocopies of earnings statements, dated November 2002 through May 2003.

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 continuous physical presence since March 9, 2001. The director denied the application on July 21, 2003.

On appeal, the states that she did not have enough evidence to submit because she was always paid in cash and doesn't have receipts. In support of the appeal, the applicant resubmits Nos. 2, 4, 7, 8, and 10, above. She also submits photocopies of documentation that is either un-dated or dated on or after June 2003, as well as the following additional document

12. A photocopy of an Urgente Express envelope addressed to her in Montgomery Village, Maryland, postmarked November 5, 2002.

The applicant claims to have lived in the United States since November 15, 2000. It is reasonable to assume that she would have a variety of contemporaneous evidence to support this claim. Affidavits from acquaintances (Nos. 1, 2, 3, and 5, above) are not, by themselves, persuasive evidence of residence or physical presence. The employment letter (No. 4) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, it is not in the form of an affidavit and does not provide the address where the applicant resided during the period of her employment, the exact period(s) of employment, the period(s) of layoff (if any), and the applicant's specific duties. Furthermore, it is not supported by objective evidence such as employee earnings statements or pay stubs. Although Nos. 6 and 9 indicate that the applicant was present in the United States in 2002, the remaining documentation submitted by the applicant is either un-dated, has an illegible date, or is dated after the dates required to establish continuous residence and continuous physical presence.

Based on a review of the record, 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, and continuous physical presence since March 9, 2001, to the date of filing her application on August 21, 2002. 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.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.