



U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 02 284 53073]

Office: VERMONT SERVICE CENTER

Date: NOV 30 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again 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 on August 8, 2003, because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant filed an appeal from the denial decision on December 12, 2003.

On May 5, 2004, the director rejected the appeal as untimely filed, and found that the appeal did not meet the requirements for a motion to reopen or reconsider.

The applicant filed an appeal from the prior decision on June 9, 2004.

On July 29, 2004, the director rejected the appeal as untimely filed, but accepted the appeal as a motion to reopen. The director denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement.

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 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 § 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation has been granted, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial application with Citizenship and Immigration Services (CIS) on September 6, 2002.

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 indicated on his/her Form I-821, Application for Temporary Protected Status, that she entered the United States without inspection on December 22, 2000. In support of her application, the applicant submitted the following:

1. a letter dated August 31, 2002, from [REDACTED] stating that he has known the applicant for two years.

On June 12, 2003, the applicant was requested to submit additional evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant, in response, submitted the following:

2. a letter dated June 18, 2003, from [REDACTED] stating that the applicant rented a room in his house located at [REDACTED] from December 2002 to July 2002; and,
3. a letter dated June 16, 2003, from [REDACTED] stating that the applicant has worked for the Acajutla Restaurant, [REDACTED] since January 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on August 8, 2003.

On December 12, 2003, the applicant filed an appeal from the denial decision. On appeal, the applicant stated that she didn't have much evidence to submit because she was in unlawful status and could not get a social security card or a job.

On May 5, 2004, the director rejected the applicant's appeal as untimely filed and found it did not meet the requirements for a motion to reopen or reconsider.

On June 9, 2004, the applicant filed an appeal from the director's prior decision. On appeal, the applicant submitted copies of Nos. 2 and 3 above.

On July 29, 2004, the director again rejected the appeal as untimely filed, but accepted it as a motion to reopen. The director denied the application again because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant states that she has sent in the requested evidence to establish her qualifying continuous residence and continuous physical presence in the United States. The applicant does not submit any additional evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

The applicant claims to have lived in the United States since December 22, 2000. It is reasonable to expect that she would have some type of contemporaneous evidence to support the letters from Mr. [REDACTED] (No. 1 above), [REDACTED] No. 2 above), and Ms. [REDACTED] (No. 3 above); however, no such evidence has been submitted.

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 residence and 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.

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.