



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 02 282 51311]

Office: VERMONT SERVICE CENTER

Date: **NOV 30 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:



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 he 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 her 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 along with her TPS application:

1. A letter dated August 28, 2002, from [REDACTED] in which she stated that she and the applicant are good friends and that she possessed personal knowledge of the applicant's presence in the United States since January of 2001; and,
2. A letter dated August 29, 2002, from [REDACTED] in which he stated that he and the applicant have been friends since they lived in El Salvador and continue to be friends in the United States since the applicant's arrival in January of 2001.

On March 10, 2004, the director requested that the applicant submit evidence establishing her continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on July 21, 2004.

On appeal, counsel claims that the applicant lived with her sister upon arriving in the United States and therefore does not have any rent receipts or utility bills to submit as proof of residency and physical presence. Counsel also

reasserts the applicant's claim of eligibility for TPS. The applicant submits the following documentation on appeal:

3. An affidavit from [REDACTED] in which he stated that the applicant is his friend and that he met the applicant in January of 2001 at the applicant's sister's house, who resided in Richmond, Virginia;
4. A copy of a medical record from Chesterfield Health Department dated June 26, 2003, and bearing the applicant's name;
5. A copy of a school record from Chesterfield County Public Schools dated June 13, 2002, and bearing the applicant's name as parent/guardian of [REDACTED] and,
6. A copy of a pay statement dated January 30, 2003, and bearing the applicant's name as employee.

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 in the United States since March 9, 2001. The applicant submitted two letters of reference (Nos. 1 and 2 above) and an affidavit (No. 3 above) in which the authors stated that the applicant was their friend and that they possess personal knowledge of the applicant's being present in the United States since January of 2001. There has been no corroborating evidence submitted to substantiate those claims. Without corroborative evidence, affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(a)(2)(i) and (v). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

The medical record, school record, and pay statement submitted as evidence and described in Nos. 4, 5, and 6 above are all dated subsequent to February 13, 2001, and March 9, 2001, and therefore cannot be used to establish the applicant's continuous residence and continuous physical presence since that time. The applicant has failed to establish that she has met the continuous residence and continuous physical presence 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.