



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: [REDACTED]
[EAC 01 251 53926]

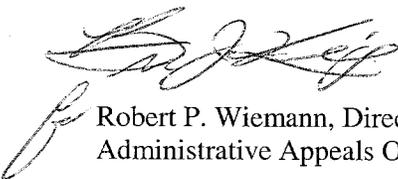
IN RE: Applicant: [REDACTED]

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 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 had failed to respond to a request for additional evidence to establish that she had continuously resided in the United States since February 13, 2001.

On appeal, counsel submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General 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 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, 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 record shows that the applicant filed her TPS application on August 13, 2001. In support of her application, the applicant submitted:

1. A copy of her El Salvadoran birth certificate with English translation, and a copy of her El Salvadoran identification card [REDACTED] issued on January 2, 1995.
2. An employment letter from the assistant manager of [REDACTED] indicating that the applicant has been employed with the company since December 2000.
3. A copy of a Contract for Legal Services signed and dated by the applicant on July 2, 2001, and copies of receipts for attorney fees also dated July 2, 2001.

Because evidence furnished was insufficient to establish eligibility, on March 15, 2004, the applicant was requested to submit evidence to establish that she had continuously resided in the United States since February 13, 2001. The applicant failed to respond; therefore, the director denied the application on July 15, 2004.

On appeal, the applicant submits:

4. A hand-written statement from [REDACTED] indicating that she has known the applicant since February 2, 2000, and that the applicant has been her employee since that time.
5. A hand-written statement from [REDACTED] indicating that she has known the applicant since March 2000, and that the applicant has lived in Charlottesville, Virginia, since that time.

The employment letters from Burger King (No. 2 above) and from [REDACTED] (No. 4 above) have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letters are not in affidavit forms and attested to by the employers under penalty of perjury, they are not dated, the employers failed to list their addresses and also the address where the applicant resided during the period of his employment, the exact period(s) of employment, the periods(s) of layoff, if any, and the applicant's duties with the company.

The statement from [REDACTED] (No. 5 above) is not dated and attested to under penalty of perjury, and she failed to list her address and also the address where the applicant resides. Furthermore, regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence in the United States. Moreover, the statements provided to establish the applicant's qualifying residence in the United States were not supported by any other corroborative evidence. The applicant claimed to have lived in the United States since May 25, 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support her claim; however, no such evidence has been provided.

The applicant has failed to establish that she has met the criteria for continuous residence in the United States since February 13, 2001. 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, it is noted that documents contained in the record of proceeding are insufficient to establish that the applicant met the criteria for continuous physical presence in the United States since March 9, 2001, as described in 8 C.F.R. § 244.2(b). Therefore, the application will also be denied for this reason.

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.