

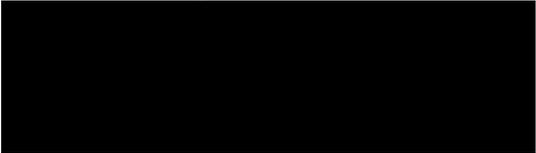


U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 04 2005

[EAC 02 174 51664]

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.

for 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 she had entered and had continuously resided in the United States since February 13, 2001 and had been continuously physically present in this country since March 9, 2001.

On appeal, the applicant states:

Last week, I received a Notice of Decision on my application for Temporary Protected Status. According to the Bureau, I did not provided sufficient evidence in order to prove my residence in the U.S. since February 13, 2001 as well as proof of my continuous presence in the U.S. since March 9, 2001. At the end of May of 2004, I received a request for additional evidence but unfortunately, I did not have the evidence with me at that time.

For the foregoing reasons, I am respectfully filing this appeal on my application. Please find enclosed copies of evidence that shows my continuous presence in the U.S. from January of 2001 to July of 2001. In the event that the Bureau decides not to grant this appeal, I request the Bureau to consider my application as dependent of my husband who is also under the Temporary Protected Status. Please notice that I have been diligent in keeping this benefit but this situation was due to circumstances beyond my control.

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).

Upon initial submission, the applicant provided the following documentation.

1. An affidavit dated April 13, 2002 from [REDACTED] who indicates that he had known the [REDACTED] family for one year and four months.

2. An affidavit dated April 11, 2002 from Tomas Reyes who indicates that he had known the [REDACTED] family for one year and five months.

On May 14, 2004, the applicant was requested to submit evidence establishing her residence since February 13, 2001, and physical presence since March 9, 2001, in the United States as well as her date of entry into the United States. The applicant was also requested to submit a national identity document or El Salvadoran passport bearing a photo and/or fingerprint. The applicant, in response, provided the following additional documentation:

3. Copies of a rent receipts to [REDACTED] from [REDACTED] dated November 3, 2000, December 3, 2000, February 3, 2001 and March 8, 2001 for the rental of a property at 11 Arlington Street, Westbury, N.Y. 11590.
4. A copy of the applicant's El Salvador national identification card issued on September 22, 1995.
5. A copy of a check dated May 3, 2002 from the applicant's bank account in East Meadow, New York to Betty Ochoa.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on August 23, 2004.

On appeal, the applicant reasserts her claim and submits the following documentation:

6. Copies of rent receipts to [REDACTED] from [REDACTED] dated December 1, 2000, January 1, 2001, February 1, 2001, March 1, 2001, April 1, 2001, May 1, 2001, June 1, 2001 and July 1, 2001 for the rental of a property at [REDACTED]
7. An affidavit dated September 2, 2004 from [REDACTED] attesting to the fact that the applicant and her children resided in her home at [REDACTED] from December 1, 2000 through August, 2001.

Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence. The copies of the rental checks forwarded by the applicant are of questionable value because they seem to show that the applicant and her husband were renting two separate properties in New York and Washington, DC during December 2000, February 2001 and March 2001. The record contains no reason for this discrepant information. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Even had there been a reasonable explanation concerning the rental receipts, given the sparse documentation provided by the applicant, it is determined that the decision of the director to deny the application shall be affirmed.

The applicant has not submitted any evidence to establish her continuous residence or continuous physical presence in the United States during the period from on and before February 13, 2001 to May 3, 2002, the date

Page 5

she wrote the check (Item #5) to [REDACTED]. She has, thereby, 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.