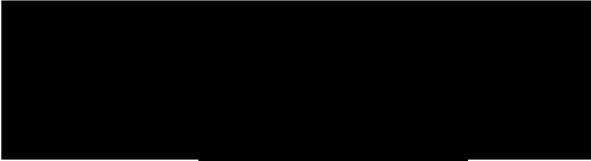


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Services**

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prevent clearly unwarranted
invasion of personal privacy**



MI

FILE:



[EAC 02 240 53181]

Office: VERMONT SERVICE CENTER

Date: OCT 04 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.

A handwritten signature in dark ink, appearing to read "R. Wiemann".

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 initially denied the application on July 23, 2003, because the applicant failed to respond to the Notice of Intent to Deny dated June 3, 2003, and, therefore, had not overcome the grounds for denial of the application.

On September 11, 2003, the applicant filed an appeal from the denial decision. On appeal, the applicant submitted additional evidence.

The director rejected the applicant's appeal on April 30, 2004, because it was filed after the prescribed 30-day appeal period, 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 requests a 60-day extension in which to submit additional evidence. To date, no such evidence has been received. Therefore, the record will be considered complete.

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 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 initially submitted two New York State birth certificates reflecting the births of her children on March 10, 1983 and February 14, 1995.

On June 3, 2003, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The record does not contain a response from the applicant.

The director determined that the applicant had failed to submit sufficient evidence to overcome the grounds for denial of the application and denied the application on July 23, 2003.

On appeal, the applicant submitted the following evidence:

1. an affidavit dated August 22, 2003, from [REDACTED] stating that she rented an apartment to the applicant at [REDACTED] from August 1, 2000 to August 1, 2002;
 2. a letter dated August 7, 2003, from [REDACTED] Human Resources Director of Contract Pharmacal Corp., Hauppauge, New York, stating that the applicant has been an employee of her company since March 5, 2002;
 3. a letter dated August 21, 2003, from [REDACTED] stating that the applicant came to the United States in 1981 and has not left the country since that time;
 4. an affidavit dated August 14, 2003, from Reverend Rochester Alvarez, Senior Pastor of Primera Iglesia Pentecostal Roca de Salvacion, Inc., in Brentwood, New York, stating that he has known the applicant since May 1981 and the applicant "has been a member of our church;"
 5. photocopies of four generic rent receipt for the period from January through March 2002;
- and,

6. photocopies of the applicant's 2002 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return and New York State Form IT-201, Resident Income Tax Return.

The director reopened the matter and denied the application again on April 30, 2004, because the applicant failed to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant has not submitted any new evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

The employment letter from [REDACTED] (No. 2 above) 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, letter is not in the form of an affidavit, and [REDACTED] does not provide the address where the applicant resided during the period of her employment, the applicant's duties with the company, and periods of layoff, if any. The letter from Pastor Alvarez (No. 4 above) 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)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of her involvement with the church.

Although [REDACTED] states in her affidavit (No. 1 above) that she rented an apartment to the applicant from August 1, 2000 to August 1, 2002, the applicant has submitted only three generic rent receipts for the period from January through March 2002 to corroborate this statement (No. 5 above). The applicant's 2002 federal income tax return and New York tax return (No. 6 above) do not reflect the applicant's specific dates of residence and physical presence in the United States in that year. The affidavit from [REDACTED] (No. 3 above) is not sufficient to establish the applicant's 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 1981. It is reasonable to expect that she would have some type of contemporaneous documents to corroborate this affidavit; however, no such evidence has been provided. Without corroborative evidence, affidavits are not sufficient to establish an applicant's qualifying continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 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). 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.

Beyond the decision of the director, the applicant has not submitted an official Salvadoran photo identification to establish her identity and nationality as described at 8 C.F.R. 244.9(a)(1). Therefore, the application also must 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.