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U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[EAC 02 144 53210]

Office: VERMONT SERVICE CENTER

Date: **OCT 04 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: 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 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: 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, the applicant claims that she is a housewife and that her husband pays all of the bills. The applicant also 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 copy of a medical insurance information statement from Nassau Health Care Corporation bearing the applicant's name and dated December 4, 2000; and,
2. A copy of a cash payment receipt from Nassau Health Care Corp. dated December 4, 2000.

On May 27, 2003, and again on July 22, 2003, the applicant was requested to submit evidence establishing her continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

3. A copy of an earnings statement from Saradon Display Industries, Inc. dated May 7, 2000 and bearing the applicant's name and address of [REDACTED] New Jersey;
4. A copy of an earnings statement dated October 24, 1999 and bearing the applicant's name;
5. A copy of a birth certificate from [REDACTED] New Jersey dated February 24, 2000, and bearing the applicant's name as the child's mother; and,

6. A copy of a physician's bill from Elizabeth Emergency Physicians, P.A. dated September 21, 2000 bearing the applicant's name as patient.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on August 29, 2003.

On appeal, the applicant reasserts her claim of eligibility for TPS and submits the following documentation:

7. A photocopy of the applicant's New York State learner permit issued on February 20, 2003;
8. A copy of a money order receipt from Travelers Express dated September 12, 2003 and issued to Citizenship and Immigration Services;
9. A letter from [REDACTED] MD, in which he states that the applicant's child has been receiving health care at his office since 2002, and had been a patient at the Freeport Health Center since 2001; and,
10. An affidavit from [REDACTED] in which he states that he has known the applicant since March 29, 1999 when she moved into his house located at [REDACTED], New York, and that she has continuously resided with him in the United States since that date.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. The insurance statements, payment receipts, earnings statements, and birth certificate are all dated prior to February 13, 2001 and March 9, 2001, and therefore, cannot be used to show continuous residence and continuous physical presence in the United States. The applicant's New York learner's permit and money order receipt are dated subsequent to the above noted dates, and therefore, are not substantive in establishing continuous residency and continuous physical presence. The letter from doctor Luis O. Herrera only covers the period from 2002. In addition, there has been no corroborating evidence submitted to substantiate the assertion that the applicant's child has been a patient of the Freeport Health Center since 2001.

There has been no corroborative evidence submitted to support the statements made by [REDACTED] regarding the applicant's claimed presence in the United States since March of 1999. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. 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(2)(i) and (v).

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.