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FILE:

[REDACTED]
[EAC 03 259 52561]

Office: VERMONT SERVICE CENTER

Date: **OCT 05 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 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, counsel asserts that the applicant is a wife and has never held a job outside of her home, except for occasional babysitting and housecleaning employment. Counsel further asserts that the applicant only has acquaintances who are able to vouch for her presence in the United States. Counsel also asserts the applicant's 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).

On March 4, 2004, 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:

1. A letter from [REDACTED] CPA, in which he stated that he is the tax accountant for the applicant and her husband and that the firm's records indicated that the couple has filed their tax records with the firm for "various years;"
2. An affidavit from [REDACTED] in which she stated that she has known the applicant since 2001 and that since 2001 the applicant has provided babysitting services to her; and,
3. An affidavit from [REDACTED] which he stated that he has known the applicant since 2001 and that the applicant has been a babysitter for him since then.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on June 9, 2004.

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

4. An affidavit from [REDACTED] which he states that the applicant and her husband have resided at his house located at [REDACTED] from the latter part of 2000 until June of 2001; and,
5. An affidavit from [REDACTED] in which he states that he has known the applicant since February of 2001 and that she is very hard working and dedicated individual.

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 tax accountant's letter is too vague in that no specific dates of service or tax filings were specified. Further, there have been no tax records submitted to substantiate the tax accountant's claim. Although [REDACTED] claims that the applicant and her husband lived with him from the latter part of 2000 to June of 2001, there has been no contemporaneous evidence submitted (rent receipts, cancelled checks, and utility bills) to corroborate that statement.

There has been no corroborative evidence submitted to support the statements made by the affiants regarding the applicant's claimed presence in the United States since 2000. 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. Further, the affiants have not demonstrated that their knowledge of the applicant's presence in the United States is independent of what the applicant told them about her entry into the United States. If not, then this statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. 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 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.

Beyond the director's decision, the applicant has failed to establish that she is eligible for late registration, in that her application was filed September 11, 2003, which is more than one year beyond the requisite registration period. Therefore, the application must also be denied for this reason.

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.