

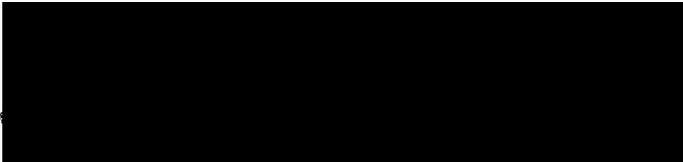


U.S. Citizenship
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FILE: [REDACTED]
[EAC 03 076 52245]

Office: VERMONT SERVICE CENTER

Date: OCT 06 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 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, the applicant 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).

On November 6, 2003, the applicant was requested to submit evidence establishing her continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant, in response, provided the following documentation:

1. A letter from Chelsea Public Schools in which the principal clerk stated that the applicant has been registered and enrolled in their school since August 19, 2002;
2. A Massachusetts school health record bearing the applicant's name and dated August 5, 2002;
3. A copy of a report card from Williams Intermediate School for the 2002-2003 school year bearing the applicant's name;
4. An affidavit from [REDACTED] in which he stated that he has known the applicant as a friend since February 10, 2001 and that to the best of his knowledge the applicant has resided in the United States since that date;
5. An affidavit from [REDACTED] in which she stated that she has known the applicant and her mother as good friends since January 9, 2001;
6. An affidavit from [REDACTED] in which she stated that she has known the applicant as a friend since January 12, 2003 and that to the best of her knowledge, the applicant has been present in the United States since 2001;

7. An affidavit from [REDACTED] in which he stated that he has known the applicant since January 2, 2001, and that to the best of his knowledge, the applicant has resided in the United States since their acquaintance;
8. An affidavit from [REDACTED] in which she stated that she has known the applicant to reside in the United States since December 11, 2000;
9. An affidavit from [REDACTED] in which she stated that she has known the applicant since January 25, 2001, and that to the best of her knowledge, the applicant has resided in the United States since their acquaintance; and,
10. An affidavit from [REDACTED] in which he stated that he has known the applicant to reside in the United States since their acquaintance.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on February 26, 2004.

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

11. An affidavit from [REDACTED] in which she states that she has known the applicant since February of 2001;
12. An affidavit from [REDACTED] in which she states that she has known the applicant since February 10, 2001;
13. An affidavit from [REDACTED] in which she states that she has known the applicant since January of 2001 as a family friend; and,
14. An affidavit from [REDACTED] in which he states that he has known the applicant since January 12, 2001.

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 school records submitted by the applicant (Nos. 1, 2, and 3 above) are all dated subsequent to February 13, 2001 and March 9, 2001, respectively; and therefore, cannot be used to establish the applicant's continuous presence in the United States since those dates.

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 December of 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 these statements are essentially extensions 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(a)(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 initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial application with Citizenship and Immigration Services (CIS) on November 13, 2002. To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). There has been no evidence submitted to demonstrate that the applicant is eligible for late registration. For this additional reason, the application will not be approved.

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.