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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 31 2009

[EAC 01 251 53919]

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. A subsequent motion to reopen was denied by the director. The case 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 applying for 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 been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant provides a brief statement and submits additional documentation.

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 designated by the Attorney General 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 issue raised by the director that will be addressed in this proceeding is whether the applicant has been continuously physically present in the United States since March 9, 2001.

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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed her application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 13, 2001.

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 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).

In a notice of intent to deny, dated April 29, 2003, the applicant was requested to submit evidence to establish her continuous physical presence in the United States during the requisite timeframe. The applicant failed to respond to the notice of intent to deny.

The director denied that application on July 7, 2003, for abandonment. The director advised the applicant that a denial due to abandonment may not be appealed. The director also advised that the applicant could file a motion to reopen. The applicant filed a motion, which was granted by director on February 20, 2004. The applicant was given 60 days to submit evidence to establish that she was physically present in the United States from March 9, 2001, to the date of the filing of her TPS application. The applicant failed to submit a response. On March 13, 2004, the director denied the application because the applicant had not established her physical presence in the United States during the requisite period.

On appeal, the applicant states that she did not know that her previous appeal was re-opened because where she use to live had problems with the post office. The applicant also states that she does not know what else she can do to prove her physical presence in the U.S. since February 2001. The applicant submits: a letter dated May 20, 2004, from the Brentwood Family Health Center in Brentwood, New York, which states that the applicant "was registered with our facility 7/27/99," and that she was last seen at the health center on May 4, 2004; a copy of her earnings statement for the pay period ending April 30, 2004; and a copy of a 1040A, U.S. Individual Income Tax Return, for the year 2003 belonging to [REDACTED]. It is noted that the tax form lists the applicant as a dependent of Mr. [REDACTED] and the relationship between the two is listed as "other."

The applicant has provided no additional documentary evidence on appeal to establish her day-to-day presence in the United States since February 13, 2001, until the filing date of her TPS application on August 13, 2001. The documentation provided on appeal fails to cover those timeframes. Further, the income tax return belonging to Mr. [REDACTED] provides no support in establishing the applicant's continuous physical presence in the U.S. during the requisite timeframe. In addition, no explanation has been provided as to why the applicant is listed as a dependent on Mr. [REDACTED] tax return. The applicant has failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for TPS on this ground will be affirmed.

Beyond the decision of the director, for the reasons stated above, the record contains insufficient evidence to establish the applicant's continuous residence in the United States since February 13, 2001. Therefore, the application must also 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 the 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.