



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
[EAC 02 293 53559]

OFFICE: VERMONT SERVICE CENTER

DATE: **OCT 31 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:

[REDACTED]

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 claims to be 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 had failed to establish that she: (1) is a national of El Salvador; (2) had continuously resided in the United States since February 13, 2001; and (3) had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, 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 first issue in this proceeding is whether the applicant is a citizen or national of El Salvador.

In a notice of intent to deny dated May 25, 2004, the applicant was requested to submit evidence to establish that she is a citizen or national of El Salvador. The applicant failed to respond; therefore, the director denied the application on July 28, 2004.

On appeal, the applicant asserts that she did submit evidence requested by the director.

8 C.F.R. § 244.9(a)(1) states, in part:

Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state....Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

A review of the record shows that the applicant furnished with her TPS application a copy of her national identity document (Cedula) issued in El Salvador on November 10, 2000. It is noted, however, that the photograph affixed to the Cedula is illegible and unidentifiable. Therefore, this national identity document is unacceptable as evidence of the applicant's citizenship or nationality. Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

The record shows that the applicant filed her initial application on September 9, 2002. In support of her application, the applicant submitted:

1. A statement dated July 30, 2002, from [REDACTED] indicating that she has personally known the applicant since December 5, 2000, and that the applicant has resided in the United States since February 13, 2001, and has been physically present since March 9, 2001.
2. A statement dated July 30, 2002, from [REDACTED] indicating that she has personally known the applicant since December 5, 2000, and that the applicant has resided in the United States since February 13, 2001, and has been physically present since March 9, 2001.

Because evidence furnished was insufficient to establish eligibility, the applicant was requested on October 8, 2003, on February 25, 2004, and again on May 25, 2004, to submit evidence establishing her qualifying continuous residence and continuous physical presence during the requisite period. She failed to respond; therefore, the director denied the application on July 28, 2004.

On appeal, the applicant asserts that she did send the proof requested by the director, and that she is attaching additional proof. She submits:

3. A receipt for rent in the amount of \$150 paid to [REDACTED] dated January 1, 2001.
4. A copy of the birth certificate of her daughter indicating that she was born in New York on August 26, 2002, and a copy of Acknowledgment of Paternity dated August 27, 2002.

The rent receipt (No. 3 above) is generic and there is no way to verify its authenticity; therefore, it has little evidentiary value. The rental address shown on the receipt [REDACTED] (NY) was not listed in any of the documents contained in the record to show that the applicant had resided at that address. Further, the applicant failed to submit supporting evidence, such as a copy of a rental agreement or a notarized affidavit from her landlord.

The statements from [REDACTED] and [REDACTED] attest to the applicant's continuous residence and continuous physical presence based on their "personal knowledge," but fail to provide any specifics regarding the nature, circumstances, or origin of the affiants' acquaintanceship with the applicant, and the address where the applicant resided during the time of their acquaintance. Moreover, the wording of these "fill-in-the-blank" affidavits is identical. As such, these documents appear to have been prepared for the affiants rather than by the affiants.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements were not supported by any other corroborative evidence. The remaining evidence contained in the record only establishes the applicant's continuous residence and continuous physical presence since August 26, 2002 (No. 4 above).

The applicant has failed to establish that she has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application on this ground will also be affirmed.

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.