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FILE:



Office: VERMONT SERVICE CENTER

Date: **DEC 06 2006**

[EAC 01 257 55345]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and an appeal from that decision was dismissed by the Administrative Appeals Office (AAO). The case is now before the AAO on a motion to reopen. The motion to reopen will be granted and the appeal will again be dismissed.

The applicant claims to be a 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 continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. An appeal from that decision was dismissed by the AAO on March 3, 2005. The applicant subsequently filed a motion to reopen the matter.

On motion, the applicant submits a letter and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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.

- (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 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The applicant filed her initial Form I-821, Application for Temporary Protected Status, on August 17, 2001. The record reflects that, in support of her initial application, in response to the director's requests for documentation, in support of her appeal and her subsequent motion to reopen, the applicant has submitted the following documentation in an attempt to establish her eligibility for TPS:

1. A photocopy of an abstract of her El Salvadoran birth certificate, with English translation;

2. Two letters, dated August 5, 2001, and July 20, 2003, from [REDACTED] stating that he had known the applicant since August 2000 when she resided in the second floor of his property located at [REDACTED] where her brothers lived as tenants;
3. Photocopies of a 2002 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, and first page of a 2002 Form 1040A, U.S. Individual Income Tax Return;
4. An affidavit, dated May 21, 2003, from [REDACTED] stating that the applicant had rented a room at his property located at [REDACTED], since November 1, 2001; and,
5. Photocopies of newspaper articles relating to immigration issues.

The applicant claims to have continuously lived in the United States since an unspecified date in August 1998. It is reasonable to assume that she would have a variety of contemporaneous evidence to support this claim. The letters and affidavit from landlords are not, by themselves, persuasive evidence of qualifying residence and physical presence, as they are not supported by any other objective evidence such as rent receipts, a lease agreement, utility bills, or other correspondence addressed to the applicant at those locations. The only objective evidence submitted by the applicant (the photocopy of her 2002 Form W02) merely indicates that she was employed in the United States at some point in 2002.

Based on a review of the documentation submitted, it is concluded that the applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Consequently, the director's decision to deny the application for Temporary Protected Status will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish her nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1). 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 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.