



U.S. Citizenship  
and Immigration  
Services

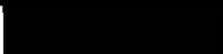
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Office: VERMONT SERVICE CENTER

Date: **DEC 29 2006**

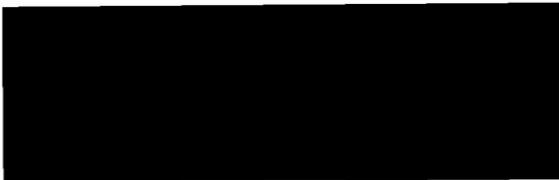
IN RE:

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:



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 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 continuously resided in the United States since February 13, 2001; and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel 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 program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. 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 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 September 5, 2003, the applicant was requested to submit evidence establishing her residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. An affidavit from the general manager of \_\_\_\_\_ in which he stated that the applicant has been employed by the restaurant since October of 2000;
2. A copy of a lab report from \_\_\_\_\_ dated July 13, 2001, and bearing the applicant's name as patient;
3. A copy of an \_\_\_\_\_ flight coupons dated October of 2000 and bearing the applicant's name as passenger;
4. A retail installment contract from \_\_\_\_\_ dated November 14, 2001, and bearing the applicant's name as buyer;
5. A diagnostic report from \_\_\_\_\_ dated July 12, 2001, and bearing the applicant's name as patient; and,
6. \_\_\_\_\_ money transfer receipts dated November of 2000 and bearing the applicant's name as sender.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on January 21, 2004.

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

7. A copy of a letter from the general manager of the [REDACTED] restaurant in which he stated that the applicant was employed by the establishment from October 29, 2000 to June 2, 2002;
8. An affidavit from [REDACTED] in which he stated that the applicant rented a room from him at [REDACTED] Washington, DC from January 10, 2000 to December 30, 2001; and,
9. A copy of a residential lease agreement dated January 1, 2000, with the applicant's name added to the list of tenants.

The appeal was rejected by the AAO on July 29, 2005, due to a lack of standing. The applicant appealed the decision on August 29, 2005, and submits the following documentation:

10. An illegible copy of a medical statement from [REDACTED]

The applicant resubmits copies of the evidence listed in numbers 7, 8, and 9 above.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the requisite time periods. There has been no corroborative evidence submitted to support the statements made by the affiants listed above. Affidavits are not, by themselves, persuasive evidence of residence or physical presence.

The flight coupons, money transfer receipts, and lease agreement are all dated prior to the requisite time period and cannot be used to establish the applicant's eligibility for TPS. All other evidence is dated subsequent to February 13, 2001; and therefore, cannot be used to establish the applicant's presence in the United States in accordance with 8 C.F.R. §§ 244.2(b) and (c).

The applicant has failed to establish that she has met the continuous residence and continuous physical presence 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.

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.



Page 5

**ORDER:** The appeal is dismissed.