



U.S. Citizenship
and Immigration
Services

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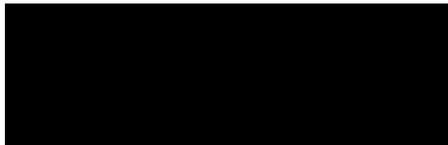


FILE: [REDACTED]
[EAC 02 127 50978]

Office: VERMONT SERVICE CENTER

Date: **JAN 05 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: 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 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).

The applicant initially submitted the following documentation along with her TPS application:

1. A rent receipt signed [REDACTED] dated January 1, 2001, which indicates [REDACTED] \$400.00 for rent at [REDACTED] that month.

On March 17, 2004, the applicant was requested to submit evidence establishing her continuous physical presence in the United States since March 9, 2001. The applicant, in response, provided the following documentation:

2. A copy of a hospital record from Rhode Island Hospital which indicates that [REDACTED] was at the hospital emergency room on January 9, 2002;
3. A photocopy of an envelope addressed to [REDACTED] Providence, Rhode Island, and post-marked January 4, 2002;
4. A copy of a pay stub from Cathedral Art Metal Co., Inc. containing the name [REDACTED] the employee with a hire date of January 24, 2002, and a check date of March 27, 2003; and,
5. Copies of rent receipts indicating that [REDACTED] paid \$400.00 per month for rent at [REDACTED] Providence, Rhode Island, for the months of December 2000, January through December of 2001, and January and February of 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on August 6, 2004. The director noted that the applicant submitted evidence that that was not in her name was dated after the date of filing, and contained conflicting information.

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

6. Copies of rent receipts indicating [REDACTED] paid \$400.00 a month in rent to [REDACTED] Rhode Island, for the months of January, February, and April of 2001, and January and February of 2002.

The applicant resubmits the copy of the hospital record from Rhode Island Hospital on appeal.

The applicant has not submitted any evidence to establish her qualifying continuous physical presence in the United States since March 9, 2001, to the time of filing February 19, 2002. The applicant asserts on appeal that she has submitted two overlapping rent receipts because she was forced to move out [REDACTED] during the middle of December 2000 and relocated at that time to [REDACTED]. Contrary to the applicant's explanation, the evidence contained in the record of proceedings indicates that the applicant was paying rent [REDACTED] from December of 2000 to February of 2002; however, item number 1 above indicates that the applicant paid \$400.00 in rent at [REDACTED] for the period of January 1, 2001 to January 31, 2001. In addition, the applicant submitted rent receipts on appeal which indicate [REDACTED] the applicant paid \$400.00 per month [REDACTED] for the months of January, February, and April of 2001, and January and February of 2002. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies.

The hospital record, post-marked envelope, and pay stub from Cathedral Art Metal Co., Inc. are all dated subsequent to the date of filing and therefore cannot be used as evidence to establish eligibility for TPS.

The applicant has failed to establish that she has met the continuous physical presence criteria described in 8 C.F.R. §§ 244.2 (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish continuous residence in the United States since February 13, 2001. For this additional reason, the application will be denied.

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.