

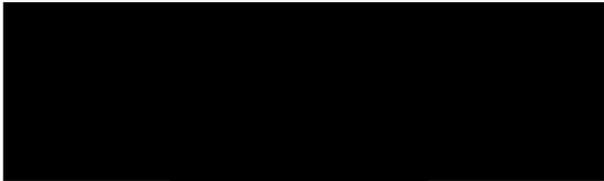
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U.S. Citizenship
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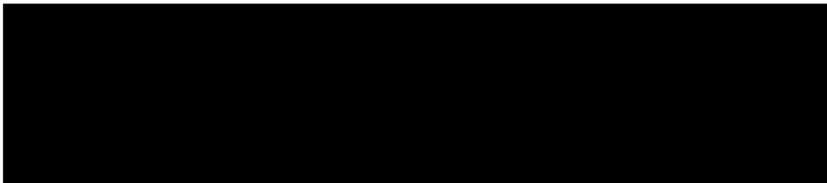
Office: VERMONT SERVICE CENTER

Date: OCT 03 2006

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:



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.

Cindy M. Gomez for
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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, counsel for 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 applicant who is a national of a foreign state 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 § 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 has been granted, with the latest extension granted until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 28, 2002.

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 indicated on her Form I-821, Application for Temporary Protected Status, that she entered the United States without inspection on October 8, 2000. In support of her application, the applicant submitted the following:

1. photocopies of money transfer receipts from Zelaya International Courier in Arlington, Virginia, dated November 15, 2000; December 18, 2000; January 18, 2001 and July 6, 2002; and,

2. photocopies of receipts from Zelaya Express in Arlington, Virginia, dated December 14, 2000 and January 13, 2001.

On March 31, 2003, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant, in response, submitted the following:

3. an affidavit dated April 8, 2003, from [REDACTED] stating that the applicant had lived at [REDACTED] Gaithersburg, Maryland, since October 2000; and,
4. two money transfer receipts dated February 6, 2001 and April 6, 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on May 15, 2003.

On appeal, counsel for the applicant states that the director erred in denying the application because the applicant had already submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States "well beyond the date of filing." Counsel submits the following additional evidence:

5. a photocopy of a receipt from Zelaya Express dated February 4, 2001;
6. photocopies of money transfer receipts dated: March 28, 2001; May 22, 2001; June 27, 2001; August 21, 2001; October 15, 2001; November 28, 2001; January 20, 2002; April 14, 2002; May 14, 2002; May 25, 2002; June 8, 2002; June 12, 2002; June 14, 2002; June 19, 2002; and, June 29, 2002;
7. photocopies of Chevy Chase Bank deposit slips indicating deposits on June 14, 2002 and April 13, 2002;
8. photocopies of banking statements from Chevy Chase Bank dated April 17, 2002 and May 19, 2003;
9. a photocopy of a generic cash receipt from [REDACTED] in Gaithersburg, Maryland, dated May 1, 2002;
10. a letter dated May 22, 2003, from [REDACTED] Human Resources Manager of Cavalier Services, Inc., in Fairfax, Virginia, stating that the applicant has worked as a full-time day porter for her company since October 1, 2002;
11. a letter dated May 23, 2003, from Chevy Chase Bank, stating that the applicant opened a checking account on April 13, 2002; and,

12. a photocopy of a postal return receipt indicating the applicant mailed a package that was received at the Vermont Service Center on April 16, 2003.

The Zelaya money transfer receipts dated from March through October 2001 (No. 6 above) appear to have been altered. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the petitioner 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. (Comm. 1988).

The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence and continuous physical presence in the United States prior to November 28, 2001. It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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 not met this burden.

ORDER: The appeal is dismissed.