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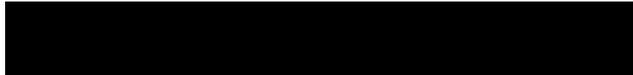
Office: VERMONT SERVICE CENTER

Date: SEP 06 2006

[EAC 02 236 52554]

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. In a subsequent motion to reopen the director affirmed the previous decision to deny the application. The matter 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 residing in the United States since February 13, 2001.

On appeal, the applicant provides some additional documentation.

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 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 section 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.
- (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 issue raised by the director to be addressed in this proceeding is whether the applicant has continuously resided in the United States since February 13, 2001.

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.

El Salvadorians applying for TPS must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

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. 8 C.F.R. § 244.9(a). The sufficiency of all evidence, however, 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 filed her initial TPS application on March 28, 2001. That application was denied on May 29, 2002, for abandonment. The applicant was given until June 30, 2002, to file a motion to reopen. The applicant did not file a motion.

The applicant filed a subsequent TPS application on July 8, 2002.

In a notice of intent to deny dated June 12, 2003, the applicant was requested to submit evidence to establish her continuous residence in the United States since February 13, 2001. The applicant was also requested to submit two (2) color photos taken within 30 days of the date of the notice of intent. The applicant failed to respond to the notice of intent to deny.

The director determined that as the applicant failed to respond to the notice of intent to deny, she failed to overcome the grounds of denial. The director denied the application on August 1, 2003. The applicant was given 30 days to file an appeal.

The applicant filed an appeal on November 27, 2004, more than one year after the director's decision.

The director determined that the applicant's appeal was filed later than the prescribed period of 33 days. The director rejected the appeal and accepted it as a motion to reopen.

On motion, the director, after a complete review of the record, determined that the applicant failed to establish her continuous residence in the United States since February 13, 2001. The director denied the application on January 21, 2005. The applicant was given 30 days to file an appeal.

On appeal, the applicant submits: two documents that were previously submitted; a copy of a letter dated November 3, 2004, from the operations manager of BPA in Fairfax, Virginia who states that the applicant has been employed by BPA since August 2001 to the present; and, copies of two envelopes date stamped February 13, 2001 and March 17, 2001. It is noted that there are no official postmarked stamps on the envelopes.

In support of the employment letter from BPA, the record does contain previously submitted earnings statements from BPA for October 2001, November 2001, December 2001, January 2002, February 2002, and March 2002. However, the record contains no credible evidence to March 28, 2001, the date she filed the first TPS application.

The applicant has provided insufficient evidence to establish her continuous residence in the United States since February 13, 2001. The applicant has not established that she has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2 (c). Consequently, the director's decision to deny the application for temporary protected status for these reasons will be affirmed.

Beyond the decision of the director, for the above stated reasons, the applicant has not provided sufficient evidence to establish her continuous physical presence in the United States since March 9, 2001. Therefore, 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.