



U.S. Citizenship
and Immigration
Services

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FILE:

Office: Vermont Service Center

Date: **APR 18 2007**

[EAC 02 231 51324]

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 claims to be 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 her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits additional evidence in support of 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 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.

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 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity 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).

Along with her TPS application, the applicant submitted the following documentation:

1. Copies of her El Salvadoran birth certificate along with an English translation;
2. A copy of a billing statement from Pepco, Potomac Electric Power Company, Account No. [REDACTED], bearing a bill issue date of "12/21/2000". It is also noted that this letter indicates that the next scheduled meter reading is May 2, 2002;
3. A copy of a billing statement from Washington Gas, Customer No. [REDACTED] reflecting a billing date and Date Due of "11/21/00";
4. A copy of a Bank of American Regular Savings account statement reflecting a date of "12/28/2000" for account number [REDACTED] bearing the name of [REDACTED] and an Beginning Balance date of "06-09-01" and an Ending Balance date of "09-07-01"; and,
5. A copy of a letter dated "01/13/01" from The JC Penny Card with regards to account number [REDACTED]

The director denied the application on December 22, 2004, because the applicant had submitted insufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States.

On appeal, counsel submits the following evidence in support of the applicant's claim of eligibility for TPS:

6. A copy of a document in Spanish from the Department of Social Services of Los Angeles;
7. Copies of money transfer receipts from the Banco Aricola De El Salvador dated October 13, 2001, November 17, 2001, and December 1, 2001;
8. Copies of earnings statements from Hotel Washington reflecting period ending dates of April 28, 2002, July 7, 2002, and August 18, 2002;
9. A copy of a money transfer receipts from Bancomercio De El Salvador, Inc. dated August 1, 2002; and,
10. A copy of a hand-written receipt reflecting a date of "2-15-01".

A review of the documentation submitted along with her TPS application as detailed in Nos. 2, 3, 4, 5, and 6 above, pre-date the beginning of the qualifying time periods for continuous residence and continuous physical presence. It is noted that the account statement as detailed in No. 4 above, reflects the name of [REDACTED]. In addition, the documents as detailed in No. 7, 8, and 9, post-date the beginning of the requisite time periods for El Salvadoran TPS. The single hand-written receipt, as detailed in No. 10 above, does not reflect the name of the business or the applicant's address; therefore, provides little, if any, substantive information with regards to the applicant's residence in the United States.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). 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.

Beyond the decision of the director, it also is noted that 8 C.F.R. § 244.9, states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any

secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification;
and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant has not provided sufficient evidence to establish that she is a national or citizen of El Salvador. Therefore, the application will 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.