

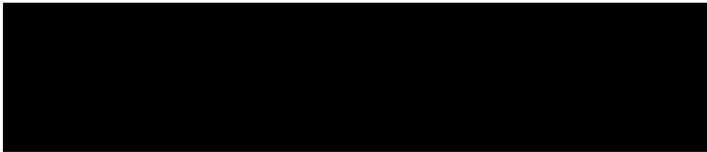
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U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE:

FEB 28 2007

[EAC 02 166 51916]

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 had failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, counsel submits a statement and additional evidence, including evidence previously furnished.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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.

The term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 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).

The record indicates that the applicant filed her TPS application during the initial registration period on April 18, 2002. The director denied the application on August 1, 2003, because the applicant had failed to "submit any evidence you thought would overcome the grounds of denial." The applicant appealed the director's decision to the AAO on September 2, 2003. Because the director's decision did not indicate the specific basis for the decision, on July 29, 2005, the AAO remanded the case to the director for the issuance of a new decision that sets forth the specific reasons for denial of the application.

The director reviewed the record of proceeding, including documentation furnished with the applicant's appeal filed on September 2, 2003. He noted that the earliest dated piece of documentary evidence submitted was July 12, 2001, and that the applicant had not submitted documentary evidence to establish that he had resided in the United States as of February 13, 2001, and had been continuously physically present from March 9, 2001, to the date he filed the TPS application. The director further noted that although the applicant indicated on his TPS application "none" under the block for his assigned Social Security number, he had provided two different Social Security numbers, and that this conflicting information calls to question the credibility of any documentary evidence he had submitted. The director again denied the application on April 19, 2006.

On appeal, counsel requests that the applicant's case be reconsidered. She submits additional evidence, including pay statements, insurance application, bank statements, utility bills, apartment lease, and receipt for services, dated from June 30, 2001 through July 26, 2002, inclusive. She also submits:

1. A statement dated May 7, 2006, from [REDACTED] indicating that he has known the applicant since the summer of 2000.
2. A statement dated May 7, 2006, from [REDACTED] indicating that she is the owner of Puerto Rico Record, and that she has known the applicant since March 1, 2001, "as he sent money to El Salvador."

3. A statement dated May 7, 2006, from [REDACTED] of The Lutheran Church of the Redeemer, Trenton, New Jersey, indicating that he has known the applicant since the year 2000 when he started attending the church, and that "obviously, this covers the time in question, from March 2001 until April 2002."

The statement from [REDACTED] (No. 1 above) merely indicates that he has known the applicant since summer of 2000; however, he does not provide any specifics regarding the nature, circumstances, or origin of his acquaintanceship with the applicant, and the address where the applicant resided during the time of their acquaintance. While [REDACTED] (No. 2 above) indicates that she has known the applicant since March 1, 2001, because the applicant sends money to El Salvador, she does not state how frequently the applicant visited her establishment or how frequently she saw the applicant during the time she claims to have known him, and the address where the applicant resided during the time of their acquaintance. Additionally, the statement from [REDACTED] (No. 3 above), has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically the Reverend does not explain the origin of the information to which he attests, and how he knows the applicant. Nor did he show inclusive dates of the applicant's membership at the church, and the address where the applicant resided during the membership period.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided to establish the applicant's qualifying residence in the United States were not supported by any other corroborative evidence. The applicant claimed to have lived in the United States since January 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The evidence furnished by the applicant is insufficient to establish his qualifying continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001. Although evidence furnished indicates that the applicant was present in the United States on December 11, 2000, the record contains no evidence of the applicant's continuous residence and continuous physical presence during the requisite period.

Documentary evidence submitted by the applicant to establish his qualifying continuous residence and continuous physical presence in the United States was dated only since June 30, 2001, to the date of filing the TPS application. Accordingly, the applicant has failed to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application will be affirmed.

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.