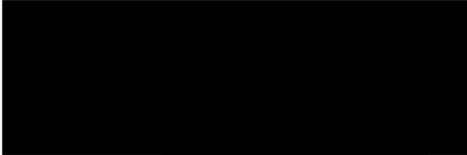




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**



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FILE:

[EAC 04 151 52986]

Office: VERMONT SERVICE CENTER

Date: JUL 06 2007

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 California Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 twelve-year old 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 she had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001.

On appeal, the applicant states she is a dependent on her mother's TPS and that she has submitted all of the required 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 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.

- (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. An extension of the TPS designation has been granted 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).

The director acknowledged that the applicant had submitted sufficient evidence to show that she had resided in the United States from March 2002 until she filed her application on April 23, 2004. However, the director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS because she had not forwarded evidence of her continuous residence in the United States from February 13, 2001 and continuous physical presence from March 9, 2001 until March 2002. It is noted that the director did not specify what documentation caused her to determine the applicant was residing in and physically present in this country in March 2002.

Upon initial submission, the applicant provided the following document concerning her continuous residence and continuous physical presence in the United States:

1. A copy of her Department of the Treasury, Internal Revenue Service (IRS), Individual Taxpayer Identification Number.

2. A copy of her mother's 2003 IRS Form 1040A, U.S. Individual Income Tax Return, showing her as a dependent.
3. Copies of the applicant's student progress reports from [REDACTED] District in New Jersey from September 2002 to June 2004.

On June 7, 2004, the director requested the applicant to submit additional evidence establishing her continuous residence and continuous physical presence in the United States. In response to that request, the applicant submitted:

4. A copy of her Republic of El Salvador passport issued on June 24, 2002, in Manhattan, New York.
5. A copy of [REDACTED] 2002 IRS Form 1040A, U.S. Individual Income Tax Return showing her as a dependent.
6. A copy of a notice dated December 3, 2003, to her from the [REDACTED]
7. Copies of school work completed in 2004, and an English as a Second Language progress report dated January 27, 2004.
8. A copy of the applicant's physical examination record dated October 28, 2003, from [REDACTED] of Hunterdon Pediatric Associates and her immunization record dated April 20, 2004, from Hunterdon Pediatric Associates in Flemington, New Jersey.
9. A copy of her certificate to return to school after a dental visit issued on October 20, 2003, in Flemington, New Jersey.

On appeal, the applicant submitted:

10. A copy of a charity care determination – Notification dated July 14, 2003, from Saint Peter's University Hospital showing the applicant as her mother's eligible family member.
11. A copy of her revised bus pass dated March 24, 2004, from Bridgewater-Raritan Schools in New Jersey.

Although the applicant is shown to be a dependent of [REDACTED] on his 2002 IRS Form 1040A, (Number 5 above), that document does not show the specific dates that the applicant was in the United States during that year. The applicant has not submitted evidence to establish her continuous residence from February 13, 2001, or continuous physical presence from March 9, 2001, in the United States to June 24, 2002, when her passport was issued to her in Manhattan, New York. She has, thereby, failed to establish that she has met the

criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS 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.