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**U.S. Citizenship
and Immigration
Services**

MI

[REDACTED]

FILE: [REDACTED]
[EAC 03 071 52432]

Office: Vermont Service Center

Date: JUL 23 2007

IN RE: Applicant: [REDACTED]

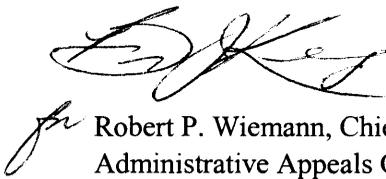
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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.


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 claims to be a 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 in the United States since February 13, 2001.

On appeal, counsel, on behalf of the applicant, asserts the applicant's 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 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 have 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).

On May 9, 2003, the applicant was requested to submit evidence establishing her continuous residence in the United States as of February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. In response, the applicant submitted some evidence in an attempt to establish her continuous residence in the United States. The director, however, determined that the applicant had failed to submit sufficient evidence to establish her continuous residence since February 13, 2001, and denied the application on July 28, 2003.

On appeal, counsel, on behalf of the applicant, states that the applicant had met the evidence requirements detailed in 8 CFR Part 244.9(4)(b). Counsel further states that the denial of the application was "based on improper grounds and inappropriate strict evidence standards which are contrary the prevailing precedent (*Secaida-Rosales v. INS*).” It is noted that counsel does not provide any additional supporting evidence, on appeal, nor does counsel provide specific details regarding his argument that the director’s denial was based on “improper grounds and inappropriately strict evidentiary standards contrary to prevailing precedent.”

A review of the record of proceedings reflects that the applicant had submitted, along with her TPS application, the following documentation:

1. A copy of her Salvadoran birth certificate along with an English translation.
2. A copy of an unofficial identification card issued on January 7, 2002.
3. An affidavit dated September 6, 2002, from [REDACTED] who stated that she had known the applicant for about two years.

Further, in response to the director's May 9, 2003 request, the applicant provided the following evidence:

4. An affidavit dated May 21, 2003, from [REDACTED], owner of Coty's Café at 12 Centre Street, in Hempstead, New York, who stated that the applicant has worked for her restaurant since May 2000.
5. A letter dated May 19, 2003, from [REDACTED] of the Community Health Worker Program in Hempstead, New York, who stated that she has known the applicant since June 2001 as a participant of the Community Health Worker Program.
6. A copy of the Social Security Card for her son, [REDACTED]
7. A copy of the birth certificate of her son born in New York on April 16, 2002.
8. A copy a "New Baby" certificate from the Nassau University Medical Center for her newborn son.
9. A copy of a note dated January 10, 2002, from the Nassau County Medical Center, Department of Obstetrics, indicating the applicant was pregnant.
10. A copy of the applicant's Medicaid screening checklist indicating a tentative birth date of April 24, 2002, for her child; and,
11. A letter dated February 13, 2002, from [REDACTED], Senior Medical Social Worker for the Nassau University Medical Center, regarding the payment for prescriptions.

The statements provided by [REDACTED], as detailed in No. 3 above, indicate that she has known the applicant "for about two years;" however, she does not indicate whether such acquaintance was in the United States. Additionally, [REDACTED] does not provide her address. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. Also, the employment affidavit from [REDACTED] as detailed in No. 4 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)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of her employment as required by regulations. Further, [REDACTED] does not provide the exact dates of the applicant's employment. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence, such as check-stubs or earnings statements, in support her claimed employment with [REDACTED]; however, no such evidence has been provided. The remaining evidence, as detailed in Nos. 5 to 11 above, all post-date the beginning of the requisite time period for continuous residence in the United States by at least four months. The closest date to the beginning of the qualifying time period for continuous residence is June 2001, as indicated in the letter from [REDACTED] of the Community Health Worker Program. It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous residence requirements described in 8 C.F.R. §§ 244.2 (c). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

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.

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish that she is a national or citizen of El Salvador. The applicant has provided a copy of her birth certificate along with an English translation as evidence of her identity; however, pursuant to 8 C.F.R. § 244.2(a)(1), the applicant must also provide proper photo identification. Therefore, the application must also be denied for this reason.

It also is noted that the applicant has provided insufficient evidence to establish her qualifying continuous physical presence in the United States during the requisite time periods. 8 C.F.R. §§ 244.2 (b). 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 TPS 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.