



U.S. Citizenship  
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FILE:

[EAC 02 204 53616]

Office: VERMONT SERVICE CENTER

Date: **MAY 17 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 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 (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 that she had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel for the applicant submits a brief and additional documentation.

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.

- (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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. 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 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The applicant filed her initial Form I-821, Application for Temporary Protected Status, with the VSC on May 17, 2002. The director denied the application on August 22, 2003. An appeal from the director's denial was filed with the AAO on September 22, 2003. The AAO withdrew the director's decision and remanded the case to the VSC on December 14, 2004. The director again denied the application on September 8, 2005, after determining that the applicant had failed to submit sufficient evidence to establish her qualifying continuous physical presence in the United States during the requisite time period. The applicant filed her current appeal from that decision on September 22, 2005.

The applicant has submitted the following documentation in support of her claim to TPS eligibility:

1. A photocopy of a "State of Virginia Identification Card," issued to her on May 30, 2000;
2. Photocopies of an airline ticket and passport pages indicating that she entered the United States as a non-immigrant visitor (B-1/B-2) on February 3, 2001, and departed to El Salvador on March 3, 2001;
3. Photocopies of affidavits from acquaintances stating that the applicant has resided in the United States since February 3, 2001;
4. A photocopy of a letter from the pastor of her church, stating that he has known the applicant since November 1999, and that she had been a member of the congregation since February 3, 2001;
5. Photocopies of her Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, for 2002 (indicating an income of \$2,977.50) and 2003 (indicating a combined income of \$12,684.12).

On appeal, counsel concludes that the applicant has timely responded to requests for evidence by submitting both specific and secondary documentation that establishes, by a preponderance of the evidence, her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Counsel further concludes that the decisions to deny the applicant's request for TPS are based on errors of law and fact, and that the applications should not have been denied.

The applicant claims to have lived continuously in the United States since February 3, 2001. It is reasonable to expect that she would have a variety of contemporaneous evidence to support this claim. Affidavits from acquaintances (No. 3, above) are not, by themselves, persuasive evidence of continuous residence and continuous physical presence. The pastor's letter (No. 4) has little evidentiary weight or probative value. The pastor states that he has known the applicant since November 1999, but does not indicate how he met her or where she resided at that time. It is also implausible that the applicant was officially registered as a parishioner at his church on the specific date of her date of entry into the United States.

There are discrepancies encountered in the evidence presented pertaining to the applicant's actual date of initial entry into the United States, and her subsequent departures and arrivals. No. 1, above, indicates that the applicant

was physically present in the United States on May 30, 2000. On her Form I-821, the applicant indicated that she had last entered the United States on February 3, 2001. Also, although the applicant has submitted documentation indicating her presence in the United States in 2003 (No. 5), there is insufficient evidence to establish her continuous presence and residence in the United States in 2002. These discrepancies in the applicant's submissions have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Furthermore, the applicant has failed to establish that her departure from the United States starting March 1, 2001, constitutes a brief, casual, and innocent absence, as defined above. The applicant's arrivals and departure(s) as a non-immigrant visitor suggest that she had either not established a residence in the United States, or that she had made false statements in order to gain entry into the United States.

It is concluded that the applicant has 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 Temporary Protected Status will be affirmed.

Based on a review of the record, it is concluded that the applicant has not submitted sufficient evidence to establish her qualifying **continuous** residence in the United States since February 13, 2001, and **continuous** physical presence since March 9, 2001, to the date of filing her application on May 17, 2002. Consequently, the director's decision to deny the application for Temporary Protected Status 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.