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U.S. Citizenship  
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Services

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FILE:

[EAC 02 250 50952]

Office: Vermont Service Center

Date:

MAY 21 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, reopened, and denied again 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 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, through counsel, asserts her claim of eligibility for TPS and submits some evidence in an attempt to support her claim.

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. Subsequent extensions 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).

On May 14, 2003, the director requested the applicant to submit additional evidence to establish her qualifying continuous residence and continuous physical presence in the United States. The director determined that the record did not contain a response to the request; and therefore, denied the application on July 21, 2003.

On April 26, 2004, the applicant filed a motion to reopen the director's decision. The director reopened the application and on May 16, 2005, requested the applicant to submit to evidence to establish her qualifying continuous residence and continuous physical presence in the United States. The director determined that the applicant did not respond to the director's request and denied the application again on July 28, 2005.

On appeal, the applicant states that she has been residing in the United States since January 18, 2001, and submits the following:

1. A copy of her El Salvadoran passport;
2. A copy of her personal identification card;
3. A copy of her El Salvadoran birth certificate along with an English translation;

4. Copies of envelopes bearing postmarks of February 12, 2001, and February 20, 2001;
5. Copies of Gigante Express receipts dated November 25, 2001, December 24, 2001, and June 26, 2002;
6. Copies of two Domestic Return Receipts bearing dates of June 1, 2001, and November 7, 2001;
7. Copies of earnings statements dated October 18, 2002, January 3, 2003, January 31, 2003, and May 30, 2003.
8. A copy of a Certified Mail Receipt dated November 2, 2001;
9. Copies of two hand-written receipts dated January 12, 2002, and February 17, 2003;
10. A copy of her New York State Learner Permit issued on July 10, 2003; and,
11. Two Western Union money transfer receipts dated April 7, 2004, and August 15, 2005.

The evidence submitted on appeal post-dates the requisite time periods for continuous residence and continuous physical presence in the United States. The envelopes as detailed in No. 4 above do not indicate that they have been processed through the United States Postal Service.

Moreover, a review of the record of the applicant's father, [REDACTED], reveals that he indicated on his application for asylum filed on May 31, 2001, that the applicant was not residing in the United States at that time.

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). 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 met this burden.

**ORDER:** The appeal is dismissed.