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U.S. Citizenship  
and Immigration  
Services

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FILE:

[EAC 06 317 70210]

Office: VERMONT SERVICE CENTER

Date: NOV 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:

SELF-REPRESENTED

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 applying for 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 that she had continuously resided in the United States since February 13, 2001; and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts her 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 who is a national of a foreign state designated by the Attorney General 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.

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 program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. Subsequent extensions of the TPS designation have been granted with the latest extension valid until March 9, 2009, 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).

In response to the director's request for evidence, the applicant submitted copies of school records and medical records as evidence to show that she has been present in the United States since August 4, 2004.

The director determined that the applicant had failed to submit any evidence to establish her continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States, and denied the application on March 23, 2007.

On appeal, the applicant states that she is eligible for TPS because her parents are both TPS registrants. The applicant implies that her TPS application should be granted based upon humanitarian reasons, and to assure family unity.

Contrary to the applicant's assertions, while regulations may allow children of aliens who are TPS-eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS as detailed in 8 C.F.R. §§ 244.2(a) through (e).

The applicant indicated on her Form I-821, Application for Temporary Protective Status, Part 2, that she entered the United States on August 4, 2004. Therefore, she cannot satisfy the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).

Although it is implied that the applicant acquired "constructive residence" based upon her parent's residence in the United States, the applicant must submit sufficient independent evidence to demonstrate that she, not her parents, has continuously resided in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001. The applicant acquires no derivative status from her parents, nor does "constructive residence" apply under TPS regulations and statute.

There are no further humanitarian provisions under the TPS program to provide for such relief. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.