

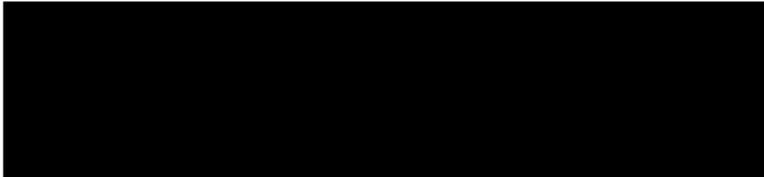
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U.S. Department of Homeland Security  
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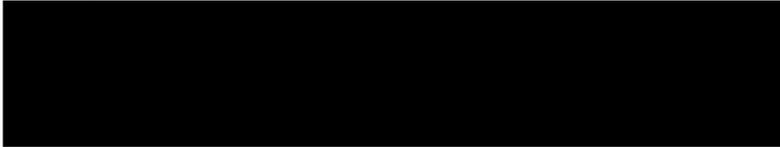
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OFFICE: NEBRASKA SERVICE CENTER

DATE: OCT 17 2007

IN RE:

Applicant:



APPLICATION:

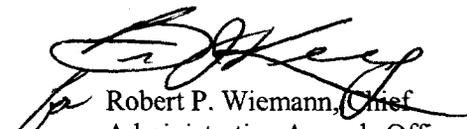
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Nebraska 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 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 had failed to establish that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant requests reconsideration of her application. She submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status 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 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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 term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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, 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).

The record shows that the applicant filed her TPS application on May 17, 2002. On August 9, 2002, the applicant was provided the opportunity to submit evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. In response, the applicant provided the following:

1. Copies of Western Union money order receipts dated July 15, 2000; June 15, 2001; and March 15, 2002. It is noted that the dates on the 2000 and 2001 receipts had been altered.
2. A statement dated May 2, 2002, from [REDACTED] indicating that the applicant began living with her in May 2000, and that they have remained friends since that time.
3. A statement dated May 1, 2002, from [REDACTED] indicating that he has known the applicant since January 2001.
4. A joint letter written in Spanish from [REDACTED] which was not accompanied by an English translation as required by 8 C.F.R. § 103.2(b)(3).

The director determined that the evidence submitted was insufficient to establish the applicant's eligibility for TPS. He also noted that the record indicates that on January 22, 2002, the applicant was encountered by the United States Border Patrol while attempting to enter the United States without inspection. The director, therefore, concluded that the applicant had failed to establish continuous residence and continuous physical presence during the requisite periods and denied the application on January 23, 2003.

On appeal, the applicant submits:

5. A statement from [REDACTED] and a statement from Jesus Alcala both indicating that they have been friends with the applicant since January 2001.

6. A letter from [REDACTED] indicating that the applicant worked for her as a housekeeper on March 14, 2001 and on March 16, 2001.

The record of proceeding contains Form I-213, Record of Deportable/Inadmissible Alien, indicating that on January 22, 2002, the applicant and her two minor children were apprehended by the United States Border Patrol near the Eagle Pass, Texas, Port of Entry, and she admitted to the officers that she was not inspected by immigration officers. She stated that she left El Salvador on November 25, 2001, and traveled, by bus, through Guatemala for about five days before arriving at the border of Mexico where she crossed illegally on December 1, 2001. She further stated that she irregularly worked to obtain money in several places as she traveled through Mexico, and that on January 22, 2002, she crossed the Rio Grande River into the United States just downriver of the Eagle Pass Port of Entry. In removal proceedings held in San Antonio, Texas, on May 21, 2002, the applicant failed to appear; therefore, the Immigration Judge ordered the applicant removed from the United States *in absentia*. A Warrant of Removal/Deportation, Form I-205, was issued on June 21, 2002.

The applicant was not present in the United States during the period required to establish eligibility. Therefore, she could not have met the criteria for continuous residence and continuous physical presence in the United States during the requisite period. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The reliability of the evidence furnished in an attempt to establish residence and physical presence offered by the applicant, listed as Nos. (1) through (6) above, is suspect.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Accordingly, the applicant has failed to establish that she has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application on this ground 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.