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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 29 2008

[EAC 02 265 50553]

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). The matter is now before the Administrative Appeals Office (AAO) 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 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, counsel submits 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.

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, 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 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, on August 15, 2002. In support of her initial application, the applicant submitted:

1. A photocopy of her El Salvadoran birth certificate, with English translation.

On August 14, 2003 and October 2, 2003, the director requested the applicant to submit evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The applicant was informed that such evidence may include, but was not limited to, employment or school records, rent/mortgage payment receipts, bank or insurance documents, medical or utility bills, or other similar materials. In response, the applicant provided:

2. Letters of support from her mother and an acquaintance.

On March 17, 2004, the director denied the application after determining that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

On appeal, counsel for the applicant submits photocopies of the following additional documentation:

3. A 2001 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, with the social security number obliterated;
4. The applicant's Virginia Driver's License, issued on October 7, 2003;
5. The applicant's Social Security card;
6. The applicant's Employment Authorization Document (EAD), issued on January 30, 2004;
7. A birth certificate for the applicant's daughter, [REDACTED] born on July 15, 2003, in Winchester, Virginia;
8. A checkbook belonging to the applicant and her husband, [REDACTED] and,
9. Documentation relating to the applicant's daughter and husband.

The applicant claims to have continuously lived in the United States since August 2000. It is reasonable to assume that she would have a variety of contemporaneous evidence to support this claim. Letters from a relative and an acquaintance (No. 2, above) are not, by themselves, persuasive evidence of qualifying residence and physical presence. Nos. 5 and 8 are undated, and Nos. 4, 6, and 7 are dated after the required dates, and No. 9 does not directly relate to the applicant. The Form W-2 (No. 3) has little evidentiary weight or probative value as the Social Security number has been obliterated, and it is not supported by evidence to establish the applicant's presence and residence as of the required dates.

Based on a review of the documentation submitted, it is concluded that the applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Consequently, the director's decision to deny the application for Temporary Protected Status will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish her nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1). 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 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.