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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

PUBLIC COpy

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FILE:



OFFICE: Vermont Service Center

DATE:

JAN 02 2008

[EAC 07 001 70225]

INRE:

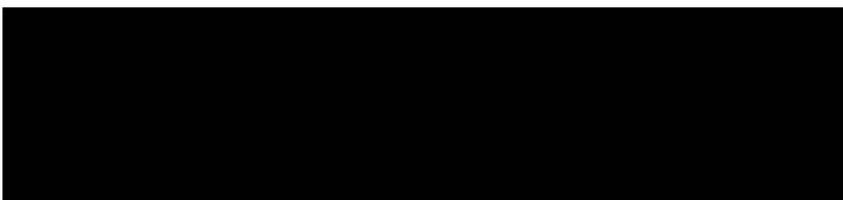
Applicant:



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, Yennont Service Center (YSC). It is now on appeal before the Administrative Appeals Office (AAO). 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 on the grounds that the applicant failed to establish that she met the continuous physical presence and continuous residence requirements for El Salvadoran national, in accordance with section 244(c)(1)(A)(i) and (ii) of the Act, as well as her eligibility for late TPS registration.

On appeal counsel submits some additional documentation and asserts that the record establishes the applicant's continuous residence and continuous physical presence in the United States for the requisite time periods.

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 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.

- (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.

El Salvadoran nationals applying for TPS 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.

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). *See* 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. *See* 8 C.F.R. § 244.9(b).

The record shows that the applicant filed her initial Form 1-821, Application for Temporary Protected Status, during the initial registration period on February 20, 2002 [receipt number SRC 02 10854901]. The application was denied on April 27, 2004, by the Director, Nebraska Service Center (NSC), on the grounds that the documentation submitted by the applicant failed to establish that she had been continuously physically present in the United States since March 9, 2001, and continuously resident in the United States since February 13, 2001, as required for El Salvadoran nationals applying for TPS. No appeal was filed.

On February 22, 2005, the applicant filed another Form 1-821 [receipt number WAC 05 800 32601J, which she identified as an application for re-registration or renewal of TPS. That application was denied on August 27, 2005, by the Director, California Service Center (CSC), on the ground that the applicant's initial application had been denied, thereby making the applicant ineligible to re-register for TPS. No appeal was filed.

The applicant filed her current Form I-821 on September 1, 2006 [receipt number EAC 07 001 70225], identifying it as her first application for TPS. On April 20, 2007, the application was denied by the VSC Director on the grounds that the applicant failed to establish her continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, as well as her eligibility for late TPS registration.

The applicant filed a timely appeal and submitted photocopies of various documentation, some of which was already in the record and some of which was new. The additional materials do not overcome the bases of denial cited in the VSC Director's decision (as well as in the earlier decision of the NSC Director on the applicant's initial application for TPS). The record of proceedings contains no documentation dated between November 2, 2000 (the date of a MoneyGram transfer from the applicant in the United States to a recipient in El Salvador), and August 23, 2001 (the date of a Gigante Express money transfer from the applicant to a recipient in El Salvador). Thus, there is a nine and one-half month gap from November 2000 to August 2001 with no documentary evidence of the applicant's residence and physical presence in the United States. If the applicant was in the United States uninterrupted during those months, as she claims, it is reasonable to expect that she would have some contemporaneous documentation from that time period.

Based on the evidence of record the AAO determines, in accord with the previous determinations of the NSC Director and the VSC Director, that the applicant has failed to establish her continuous physical presence in the United States since March 9, 2001, and her continuous residence in the United States since February 13, 2001, as required for TPS applicants from El Salvador under section 244(c)(1)(A)(i) and (ii) of the Act and 8 C.F.R. § 244.2(b) and (c). Therefore, the denial of the current application by the VSC Director 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 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 that burden.

ORDER: The appeal is dismissed.