



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JAN 03 2008

[EAC 07 004 80070]

IN RE:

Applicant:

[REDACTED]

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 Vermont 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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 had not met the continuous residence and continuous physical presence requirements for TPS. The director also determined the applicant has provided insufficient evidence to establish that she is a national or citizen of El Salvador.

On appeal, the applicant states that she entered the United States on approximately January 30, 2001 at San Ysidro, California. She submits additional documentation for consideration.

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 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 section 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.
- (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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her initial TPS application on October 6, 2007. Upon initial submission, the applicant forwarded:

1. A copy of a license and certificate of confidential marriage showing that she married [REDACTED] on September 8, 1998 in Los Angeles, California.

On February 21, 2007, the applicant was provided the opportunity to submit evidence establishing that she arrived in the United States prior to February 13, 2001, and establishing her continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant did not respond to the February 21, 2007, request. The director determined that the applicant failed to submit sufficient evidence to establish her continuous residence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal she provided:

2. A copy of the applicant's rental agreement for a property in California beginning on September 1, 2000, and continuing month to month.
3. Copies of fourteen of her rent receipts dating from April 2, 2001, to March 3, 2005.
4. Copies of five Forms I-766, Employment Authorization Card, valid from 10/21/98 thru 10/20/99, 5/5/00 to 5/4/01, 5/20/02 to 5/19/03, 9/4/03 to 9/3/04 and 2/7/05 to 2/6/06

based upon her derivative status under her husband's Form I-589, Request for Asylum in the United States.

It is determined that the applicant has not submitted sufficient evidence to establish her continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to the date she filed her application. She has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS shall be affirmed for these reasons.

Also, she has provided insufficient evidence to establish that she is a national or citizen of El Salvador. She has provided a copy of her birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a) and § 244.9(a)(1). Consequently, the application shall be denied for this additional 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.