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

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FILE:



Office: VERMONT SERVICE CENTER

Date:

JUL 24 2008

[EAC 03 034 51695]

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 sustained.

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 determined that the applicant failed to establish she had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

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 as 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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 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 granted until March 9, 2009, upon the applicant's re-registration during the requisite 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 September 9, 2002. On March 16, 2004, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided the following documentation:

1. A copy of the applicant's Employment Authorization Cards for February 1997 to February 1998 and March 2000 to March 2001.
2. A copy of the applicant's El Salvadoran passport issued in New York, New York on November 7, 2000.
3. Copies of the applicant's North Bergen High School identification cards for the 1997 through 1998 and 1999 through 2000 school years and the applicant's school schedule from North Bergen High School dated August 30, 2000.
4. The applicant's SAT admission ticket for the January 27, 2001 test and the SAT test billing statement dated February 13, 2001.

The director determined that the applicant failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, the applicant states that she filed her asylum application on January 24, 1996 and her NACARA application on March 2, 2001. The applicant also states that she was issued an Employment Authorization card for 2001 and part of 2002. According to the applicant she attended the NACARA interview on or about August 2001 and graduated from North Bergen High School on June 22, 2001. The applicant also submits the following documentation:

5. A letter from [REDACTED] dated October 24, 2000.
6. Copies of a high school graduation notice from the North Bergen Board of Education dated April 2001; the applicant's school transcript from the North Bergen High School for the 2000 and 2001 academic year; the applicant's secondary school record dated June 22, 2001; the applicant's SAT results from a January 2001 test; a letter from the State of New Jersey Higher Education Student Assistance Authority dated July 26, 2001; the applicant's student schedule dated August 7, 2001 from Lehigh Carbon Community College; a letter from the Lehigh Carbon Community College financial aid office dated August 10, 2001.
7. A copy of the applicant's Pennsylvania driver's license issued on March 9, 2002.
8. Copies of Notice of Suspension of Telephone Services from RCN dated March 14, 2002, RCN bills dated November 22, 2001 and December 28, 2002; and a MCI Worldcom bill dated February 8, 2002.

The applicant has submitted sufficient evidence to establish that she has met the criteria for continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. Consequently, the director's decision to deny the application for temporary protected status will be withdrawn.

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 met this burden.

ORDER: The appeal is sustained.