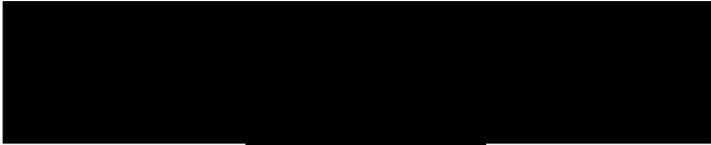




U.S. Citizenship
and Immigration
Services

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invasion of person privacy



FILE: [REDACTED] OFFICE: Vermont Service Center DATE: MAY 23 2008
[EAC 03 241 53808]

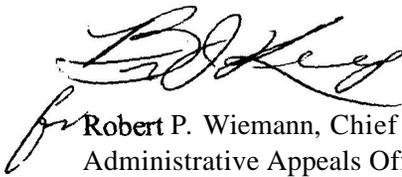
INRE: Applicant: [REDACTED]

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 office that originally decided your case. Any further inquiry must be made to that office.


for 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 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 she has continuously resided and been continuously physically present in the United States during the requisite periods. The director also found that the applicant has failed to establish her national identity.

On appeal, the applicant states that she could not respond to the director's Notice of Intent to Deny because she never received it. She further explains that the residents of her apartment complex have difficulty with the mail and her mail could have ended up in her neighbor's mailbox which may explain why she never received the notice.

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.

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 designation of TPS for El Salvadorans has been extended several times, 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).

On October 2, 2003, the applicant was requested to submit evidence establishing her continuous residence since February 13, 2001 and continuous physical presence since March 9, 2001, in the United States. The applicant was also requested to submit a photo identity document. The applicant, however, did not respond to the notice.

The director determined that the applicant had failed to establish her eligibility for TPS and denied the application on June 17, 2004.

On appeal, the applicant states that the person who helped her with her application made an error on her date of entry into the United States. She further states that she entered the United States on November 10, 2000 not November 10, 2001, as stated on her TPS application and submits the following documentation:

1. A letter dated July 8, 2004 from [REDACTED], attesting that the applicant has been babysitting her children since December of 2000;

2. A letter dated July 13, 2004 from _____ stating that the applicant has worked with her cleaning houses since November of 2000;
3. Copies of pay stubs from Comfort Inn/Inda Corp., dated May 2, 2002, May 23, 2002, and June 20, 2002; and,
4. Copies of pay stubs from Absolute Prty Rntl & Spply Inc., for the years 2002 and 2003.

The two affidavits submitted with the appeal state only that the writers have "known the applicant since 2000" and thus are not sufficiently relevant to support the applicant's assertions of eligibility for TPS. Even in the light most favorable to the applicant these letters lack sufficient detail and context, and do not cover the entire required period. While 8 C.F.R. § 244.9(a)(2) specifically states that additional documents such as letters "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is sufficient to establish the applicant's qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since 2000, it is reasonable to expect that she would have some other type of contemporaneous evidence to support her claim. However, no such evidence has been provided.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the requisite period. 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 will be affirmed.

In addition, the applicant has failed to establish her national identity. Section 8 C.F.R. § 244.9 requires applicants to submit all information requested in the instruction on the forms and as may be requested by CIS. Acceptable evidence of nationality includes:

- i. Passport;
- ii. Birth Certificate accompanied by photo identification; and/or
- iii. Any national identity document from the alien's country of origin bearing a photo and/or fingerprint.

The record reveals that the applicant has only submitted a copy of her Salvadoran birth certificate and an English translation and not the required photo identification. The evidence submitted is not sufficient to establish the applicant's national identity. Therefore, the director's decision to deny the application on this ground is also affirmed.

Beyond the decision of the director, it is noted that the record of proceeding contains a Form 1-862, Notice to Appear, indicating that the applicant entered the United States at or near San Diego, CA (MA) on or about November 10, 2001. This is further evidence that the applicant has not met the continuous residence and continuous physical presence requirements for TPS.

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 this burden.

ORDER: The appeal is dismissed.