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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 24 2004

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:

[redacted]

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, Director
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 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 that she has continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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.

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 and since February 13, 2001. 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.

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 and since March 9, 2001. 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 record reflects that the applicant filed her TPS application on August 27, 2001. In support of her application, the applicant submitted:

1. An affidavit from the applicant's husband, Jose Posadas, indicating that he and the applicant came to the United States on August 5, 1988; they have three children living in El Salvador; they were living in Houston, Texas, until December 1988 when they moved to Los Angeles, California; on May 1996, they moved to Silver Spring, Maryland, until November 1997 when they returned to Los Angeles; on October 1999, they moved to Arlington, Virginia, where they are presently residing.

2. Copies of California Identification Cards issued to the applicant on July 22, 1991, and on December 28, 1999.

On October 31, 2002, the applicant was requested to submit evidence to establish that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001. The applicant, in response, submitted:

3. A copy of a lease agreement dated August 21, 2001, for Apartment #203, 4521 South 31st Street, Arlington, Virginia;

4. Copies of the applicant's earnings statements from May 31, 2002 through December 31, 2002; and

5. Wakefield High School "Interim Progress Report" for the petitioner's son (Olman) dated December 16, 2002, for the school year 2002-2003.

The director determined that the applicant had failed to establish her qualifying residence and physical presence in the United States. On appeal, the applicant submits the following documentation:

6. A letter dated April 19, 2003, from Blanca Lovo, Leasing Consultant of Park Shirlington Apartments, indicating that Jose Posadas is a resident and lease holder of 4521 South 31st Street, Apt. #203, and that the applicant has been listed as an occupant since September 1, 2001.

7. A letter dated March 30, 2003, from Tracey Dickey indicating that the applicant began working for SSC Service Solutions on November 16, 2001, and that she is still currently employed with the company.

8. An affidavit from Nora Estela Lazo indicating that her friend (the applicant) came to Virginia with her husband on September 1999, and that the applicant lived with her in the same apartment until she moved to Shirlington in September 2001.

It is noted that the affidavit from Ms. Lazo (item #8 above) indicating that the applicant lived with her from September 1999 until September 2001, is inconsistent with Mr. Posadas' statement (item #1 above) where he

stated that he and the applicant moved to Virginia in October 1999. Further, this affidavit is unsupported by any documentary evidence to establish Ms. Lazo's claim. Furthermore, no documentary evidence was furnished to establish that the applicant was, in fact, residing in Virginia since September 1999 until September 2001 when she moved to the Shirlington apartment.

The applicant has furnished no supporting documentation to establish continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, through the date of filing the application on August 27, 2001. The applicant has, therefore, failed to establish that she met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application will be affirmed.

The burden of proof is upon the applicant to establish that 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.