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

M1



FILE:

[REDACTED]
[EAC 02 295 53246]

Office: VERMONT SERVICE CENTER

Date: **JAN 26 2006**

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:



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, reopened, and again denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel for the applicant indicates that he is sending a brief and/or evidence to the AAO within 30 days of filing the appeal. To date, no additional documentation has been received; therefore, the record is considered complete.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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.

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. 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 valid until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On June 27, 2003, August 3, 2004, and January 12, 2004, the director requested the applicant to submit evidence to establish her qualifying continuous residence and continuous physical presence in the United States. The record reflects that the applicant failed to respond to the director's requests.

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The director denied the application on March 23, 2004.

On May 13, 2004, the applicant filed an appeal of that decision. Because the appeal was not filed within the time allotted, the director accepted the appeal as a motion to reopen. In support of the motion, the applicant submitted the following documentation:

1. A photocopy of her El Salvadoran birth certificate, with English translation;
2. Photocopies of her Employment Authorization Document (EAD) and Social Security card;
3. Affidavits and letters from acquaintances attesting to their knowledge of the applicant;
4. A letter, dated April 10, 2004, from ██████████ Westbury, New York, stating that the applicant had been a client since December 30, 2000;
5. An undated letter from ██████████ Westbury, New York, stating that the applicant had been employed from January 25, 2000 to October 26, 2001; and
6. Photocopies of consecutively numbered generic rent receipts, dated January 2001 through April 2001; September 2001 through December 2001; and May 2002 through August 2002.

On September 29, 2004, the director reaffirmed his decision to deny the application. Counsel for the applicant filed the instant appeal of that decision on October 21, 2004.

The applicant claims to have lived continuously in the United States since May 1999. It is reasonable to expect that she would have a variety of credible, contemporaneous evidence to support this claim. Affidavits and letters from acquaintances or business owners (Nos. 3 and 4, above) are not, by themselves, persuasive evidence of qualifying continuous residence and continuous physical presence. The employment letter (No. 5) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, it is not in the form of an affidavit and does not provide the address where the applicant resided during the period of her employment, and the period(s) of layoff (if any). Furthermore, it is not supported by any objective evidence, such as earnings statements or employee payroll records. Similarly, the rent receipts (No 6) have little value as they are consecutively numbered, generic, issued for sporadic time periods of time, and are not supported by any corroborative evidence such as a lease agreement or correspondence to the applicant confirming her residence at the address specified.

Based on a review of the documentation submitted, it is concluded that the applicant has failed to submit sufficient evidence to establish her qualifying continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing her application on September 9, 2002. Consequently, the director's decision to deny the application for Temporary Protected Status on these grounds will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish her nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1). The application must also be denied for this 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.