

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

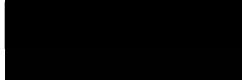
PUBLIC COPY

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

[REDACTED]

[Handwritten signature]

FILE:



Office: VERMONT SERVICE CENTER

Date: **MAY 25 2007**

[EAC 01 211 53685]

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.

Cindyn. Homey
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The matter 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 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 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, the applicant submits additional documentation.

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 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 entry on or prior to February 13, 2001, 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. The Secretary of the Department of Homeland Security has granted a subsequent extension of the TPS designation with validity until September 9, 2007, 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).

The record shows that the applicant filed her initial TPS application on June 18, 2001. The applicant provided insufficient documentation to substantiate her continuous residence and continuous physical presence in the United States upon initial submission or in response to the director's Notice of Intent to Deny dated September 19, 2003. 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, the applicant submits:

1. A copy of an automobile repair "estimate of record" dated February 9, 2001 written for [REDACTED] is owner of an automobile by [REDACTED] an adjuster for [REDACTED] in Fairfax, Virginia.

2. A copy of an invoice to the applicant from [REDACTED], in Arlington, Virginia, for account number [REDACTED] indicating that she paid \$150 towards her outstanding balance on June 27, 2001.
3. A copy of a bill from the County of Fairfax in Virginia showing that the 2000 property tax for the automobile of [REDACTED] was paid on April 10, 2001.
4. A copy of an unsigned letter to the applicant dated July 23, 2001 from a field office manager of the Social Security Administration office in Fairfax, Virginia, acknowledging receipt of [REDACTED] Social Security card application.
5. A copy of [REDACTED] Internal Revenue Service's (IRS) Form W-2, Wage and Tax Statement from [REDACTED] Fairfax, Virginia, for 2001.
6. A copy of the [REDACTED] IRS Form W-2, Wage and Tax Statement from [REDACTED] Inc., White Plains, New York, for 2001.
7. A partial copy of [REDACTED] IRS Form W-2, Wage and Tax Statement from [REDACTED] Inc., Fairfax, Virginia.
8. A partial copy of [REDACTED] IRS Form W-2, Wage and Tax Statement from [REDACTED] Inc., Crofton, Maryland.
9. A copy of the first two pages of [REDACTED] IRS Form 1040, U.S. Individual Income Tax Return for 2001.

The documents submitted on appeal establish that the applicant continuously resided in the United States since February 13, 2001, and has maintained continuous physical presence in the United States from March 9, 2001, to the filing date of the TPS application. Consequently, the applicant has submitted sufficient evidence to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

However, the record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated October 31, 1997, under the name [REDACTED] in which the applicant informed a Special Agent of the Citizenship and Immigration Services or CIS (formerly, the Immigration and Naturalization Service) that she was born in Michocan, Mexico on March 1, 1974, and that her father named [REDACTED] (deceased) and her mother [REDACTED] were both citizens and nationals of Mexico. The record also contains a Form I-263, Record of Sworn Statement in an Administrative Proceeding, under the name [REDACTED] dated October 31, 1997 in which the applicant related her biographical data to the same Special Agent. The Form I-263 indicates that she had been born in Michocan, Mexico, on March 1, 1974. Additionally, the record shows that the applicant was voluntarily returned to Mexico on November 10, 1997, based upon her claim to being a Mexican citizen. However the record now contains a copy of an El Salvadoran passport identity page under the name [REDACTED] showing the applicant was born on March 1, 1974 in San Salvador, El Salvador.

The applicant claimed and/or established her nationality as being Mexican at her October 31, 1997 interview when she elected to present herself as a national of Mexico to the United States Government. Therefore, the applicant's "operative nationality" was not that of a TPS-designated country as held in GENCO Op. 92-34 (August 7, 1992). *See, also, Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983); *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9th Cir. 1997). Consequently, the applicant has not established qualifying citizenship and nationality for TPS and the application is denied for this reason.

It is noted that at the time of her apprehension, the applicant allegedly was in possession of the El Salvador passport. It is also noted that the applicant failed to disclose this information on her TPS application under penalty of law, and may thus, also be ineligible under Section 212(a)(6)(C) of the Immigration and Nationality Act.

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 cited 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.