

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

[REDACTED]

M1

FILE: [REDACTED] Office: VERMONT SERVICE CENTER  
[REDACTED]-consolidated therein]

Date:  
SEP 07 2010

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: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for Temporary Protected Status was denied by the Director, Vermont Service Center. The matter 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: 1) she had continuously resided in the United States since February 13, 2001; 2) she had been continuously physically present in the United States since March 9, 2001; and 3) her nationality.

On appeal, the applicant asserts that she plans to submit the evidence required; however, she needs additional time to gather the requirement information. However, more than five years later, no additional correspondence has been presented by the applicant.

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 Secretary 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 term *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 term *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, 2012, 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 U.S. Citizenship and Immigration Services (USCIS). 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).

Along with her TPS application, the applicant submitted a receipt dated October 11, 2001 from AAA Bonding Agency, Inc, in Houston, Texas, and an affidavit from a cousin, [REDACTED] who indicated that the applicant arrived in Pennsylvania on April 5, 2001, and has resided continuously since that time.

On February 11, 2004, 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 evidence to establish her nationality or citizenship. The applicant was granted 30 days in which to submit a response. The applicant, however, failed to respond to the notice. The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on February 3, 2005.

The first issue to be addressed is the applicant's nationality. The record contains the applicant's original El Salvadoran passport. As such, the director's finding that the applicant had not established her nationality will be withdrawn.

The second and third issues to be addressed are whether the applicant has established her continuous residence in the United States since February 13, 2001 and her continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a photocopied receipt dated June 4, 2001, from [REDACTED] and a photocopied receipt purportedly issued on January 6, 2001, from Medrano Express in Hempstead, New York.

The receipt dated January 6, 2001 from [REDACTED] has no probative value or evidentiary weight as the applicant's passport contains a departure stamp dated February 21, 2001 from El Salvador and an admission stamp also dated February 21, 2001 from the Guatemalan immigration.

In addition, the Form I-213, Record of Deportable/Inadmissible Alien, reflects that on March 30, 2001, the applicant was apprehended near Laredo, Texas. The applicant indicated that she departed El Salvador on February 20, 2001 and crossed into Guatemala legally by bus; she traveled through Mexico by bus and stayed there for nine days; she entered the United States without inspection by wading the Rio Grande River on March 29, 2001; and she was en route to Pennsylvania to reside and seek employment.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant has not submitted any credible evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the requisite periods. 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 on these issues will be affirmed.

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.

Finally, the record reflects that a removal hearing was held on August 28, 2002, and the applicant was removed *in absentia* from the United States. On September 9, 2002, a Form I-205, Warrant of Removal/Deportation, was issued.

**ORDER:** The appeal is dismissed.