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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: APR 07 2005
[EAC 02 063 52134]

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:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 she had been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant asserts that she has no employment evidence to prove she has resided in the United States since her arrival. The applicant submits additional evidence in an attempt to establish continuous residence and physical presence in the United States since March 2001.

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 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. 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 used 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity 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 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 TPS application on December 10, 2001. On November 13, 2002, the applicant was provided the opportunity to submit evidence establishing continuous physical presence in the United States from March 9, 2001, to the filing of the application. The applicant, in response, provided pay stubs in the name of [REDACTED] for pay periods ending November 15, 1999, August 31, 2000 and November 30, 2000. These pay stubs only indicate the applicant was present during those pay periods, and do not establish the applicant's qualifying continuous residence and continuous physical presence.

The applicant failed to submit sufficient evidence to establish her continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, the applicant states that she has been married to a United States citizen since January 2001. According to the applicant, she and her husband agreed that she would take care of the home instead of working outside the home. The applicant states that, as a result, she has no pay stubs to show she has resided continuously in the United States since her arrival. The applicant submits a copy of her employment authorization card, a statement from [REDACTED] a copy of her passport, and a copy of her marriage certificate.

In his statement, Dr. [REDACTED] states that the applicant was under his professional care from October 2, 2002 through May 14, 2003. This document establishes the applicant's presence subsequent to the date for establishing continuous physical presence in the United States. Therefore, the statement cannot establish the applicant continuous physical presence from March 9, 2001 to the filing of her application. Conversely, the applicant's passport, which was issued in Washington, D.C. on September 20, 2000, and her marriage certificate, which was

issued on January 5, 2001, indicate the applicant's presence prior to the relevant time period. Therefore, these documents also fail to establish the applicant's qualifying continuous physical presence. The applicant has failed to submit any evidence of her continuous residence or continuous physical presence in the United States between January 5, 2001 and October 2, 2002.

The applicant has not submitted any evidence to establish that she has met the criteria for continuous physical presence described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.