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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:



[EAC 02 231 51283]

Office: VERMONT SERVICE CENTER

Date: APR 11 2005

IN RE:

Applicant:



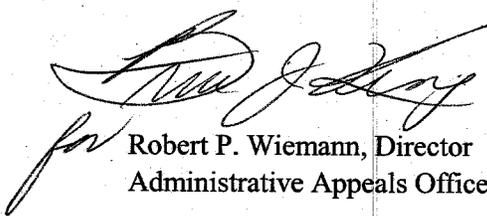
APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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.


for 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 denied the application because the applicant failed to establish that she had continuously resided in the United States since February 13, 2001, and failed to establish that she had been continuously physically present in the United States since March 9, 2001.

On appeal, applicant provides 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 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

[REDACTED]

(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 issues raised by the director to be addressed in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and whether she has been continuously physically present in the United States since March 9, 2001.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

El Salvadorians applying for TPS must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

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. 8 C.F.R. § 244.9(a). The sufficiency of all evidence, however, will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof

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the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

In a notice of intent to deny, dated August 18, 2003, the applicant was requested to submit evidence establishing her continuous physical presence in the United States since March 9, 2001, and her continuous residence in the United States since February 13, 2001.

The director found that the documentation presented by the applicant in response to the notice of intent to deny, failed to establish the applicant's continuous residence and her continuous physical presence in the United States during the requisite timeframes. The director denied the application on October 20, 2003.

On appeal, the applicant provides numerous earnings statements from SIVNAM Enterprises, Inc., T/A Popeyes for the following pay periods: June 29, 2001, July 20, 2001, July 27, 2001, August 10, 2001, August 24, 2001, September 7, 2001, September 21, 2001, October 5, 2001, October 19, 2001, November 2, 2001, November 10, 2001, November 30, 2001, December 14, 2001, December 28, 2001, January 11, 2002, February 22, 2002, April 19, 2002, May 17, 2002, May 31, 2002, June 14, 2002, July 12, 2002, September 6, 2002, November 29, 2002, April 20, 2003, and June 13, 2003. The applicant also provided a notice from the Virginia Department of Social Services dated November 21, 2002. The applicant further provides a document in a foreign language with no English translation. 8 C.F.R. § 204.1(f)(3) states that foreign language documents must be accompanied by an English translation which has been certified by a competent translator.

The evidence submitted on appeal is not sufficient in establishing the applicant's continuous residence in the United States since February 13, 2001, and her continuous present in the United States since March 9, 2001. The earnings statements, although substantial, do not begin until June 29, 2001, leaving almost a five-month gap between the onset of the qualifying timeframes and the issuance of the first earnings statement dated June 29, 2001. The documentation provided is not sufficient in demonstrating the applicant's day-to-day presence and residence in the United States from the onset of the qualifying timeframes until the issuance of the June 29, 2001 earnings statement. The applicant has failed to provide sufficient evidence to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

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.