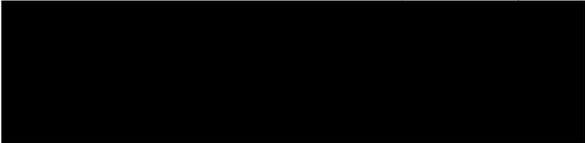


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Office: VERMONT SERVICE CENTER

Date: **AUG 02 2005**

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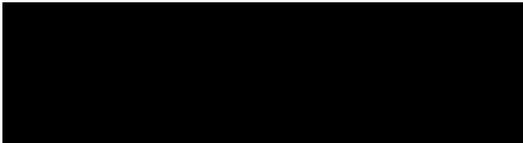
Applicant:



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.

A handwritten signature in cursive script, appearing to read "R. P. 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 denied the application because the applicant failed to establish that she had continuously resided in the United States since February 13, 2001.

On appeal, counsel provides a brief statement and two affidavits.

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

- (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

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 July 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 statement provided by the applicant, in response to the notice of intent to deny, failed to establish her continuous residence in the United States during the requisite timeframe. The director states that:

You have stated that you arrived on February 5, 2001, and stayed in hiding for over twenty days before you were captured on a bus on February 27, 2001. There is no independent evidence offered to support this statement. In fact, your statement of July 11, 2002, suggests that you were suffering a high fever throughout the time of your entry into this country. It appears that you told Immigration officials in 2001 that you had entered the United States on February 25, 2001, which conflicts with your later statement.

The director denied the application on August 22, 2003. The director did not cite the additional ground in the notice of intent to deny, which was the applicant's failure to establish her continuous physical presence in the United States during the requisite timeframe. This issue will be addressed beyond the decision of the director.

On appeal, counsel states that he is providing sworn affidavits from the applicant and her mother, which should not be ignored as evidence of the applicant's eligibility for TPS.

The applicant's "Sworn Statement" states in pertinent part, that:

4. I entered the United States on February 5, 2001 through Brownsville, TX along with my mother,
5. My mother and I remained hidden for several days in a house we were taken to in Brownsville, TX.
6. The poor conditions that we were in made me get sick so we decided to abandon the house and take a bus to San Antonio, TX. Then on February 25, 2001 at an inspection cite, several Immigration officers got in the bus and detained us because we had not [sic] documents.
7. My mother and I were put in deportation proceedings.
8. The Immigration Officers never asked us our date of entry into the United States.
9. They wrote in our Notices to Appear that we entered the United States on February 25, 2003 [sic] which was the date we were arrested but not the date we entered.
10. Unfortunately, it is very difficult for me to obtain evidence that I entered the United States on February 5, 2001 because it is so close to the February 13, 2001 date limit.
11. The only witness of my entry on February 5, 2003 [sic] through Brownsville, TX was my mother

The applicant's mother, Alien, states in her "Sworn Statement," in pertinent part, that:

2. I entered the United States on February 5, 2001 through Brownsville, TX along with my daughter [REDACTED]
3. My daughter and I remained hidden for several days inside a house to which we were taken in Brownsville, TX.
4. The poor conditions that we were in caused my daughter to get sick, therefore, we decided to abandon the house and take a bus to San Antonio, TX. Then on February 25, 2001 at an inspection site, several Immigration officers got in the bus and detained us because we had not [sic] documents.
5. My daughter and I were put in deportation proceedings.
6. The Immigration Officers never asked us our date of entry into the United States.
7. They wrote in our Notices to Appear that we entered the United States on February 25, 2003 [sic] which is the date we were arrested but not the date we entered.
9. I believe my daughter is eligible for TPS because she is Salvadorian by birth and has continuously resided in the United States since February 5, 2001.

Counsel provided no other documentary evidence.

To establish the applicant's continuous residence in the United States since February 13, 2001, the record contains the following: a copy of a postmarked envelope dated February 2002, from Southampton High School in Southampton, New York addressed "To the Parent/Guardian of: [REDACTED] a postmarked envelope addressed to the applicant, dated December 5, 2001; a certificate from Southampton High School stating that the applicant "has been named to the Principal's List WITH HONOR for academic achievement during the period November 12, 2001 to January 25, 2002;" a copy of an "IMMUNIZATIONS" record dated May 31, 2001; a copy of the applicant's high school Progress Report dated December 14, 2001; a letter from [REDACTED] who states that she has known the applicant since February, 2001; a letter dated July 1, 2002, from [REDACTED], who states that she has known the applicant and her mother since March 1, 2001, as the applicant is a student in the school where she works; a letter dated August 4, 2003, from [REDACTED] of Southampton, New York, who states that she has known the applicant since February 5, 2001, as the applicant is a student at Southampton High School where she teaches; and, a letter dated July 11, 2002, from the applicant who states, in pertinent part, that:

I [REDACTED] confirm that on February 5, 2001 I came to the United States through Matamoros Mexico with my mother [REDACTED] we crossed the river at 11 o'clock at night, they passed us in a tire, after passing to the other side of the river we had to run until three o'clock in the morning. We were hidden in a field but we were in the United States, there we waited for some people to come pick us up to send us to Houston Texas in a trailer, but the people took 15 days to send us, and we had to stay hidden in one house because they said that immigration was registering the trailers. On February 25<sup>th</sup>, 2001 my mother decided to take a bus going to San Antonio Texas because I was very sick.

The documentation contained in the record is not sufficient credible evidence to demonstrate the applicant's continuous residence in the United States since February 13, 2001. The documentation described above, that is not a letter or affidavit, does not begin until May 2001. The letter from [REDACTED] of Southampton, New York, who claims to have known the applicant since February 5, 2001, (the date the applicant claims to have

entered the United States) contradicts the applicant's letter dated July 11, 2002, in which the applicant indicates that she was crossing the border at Matamoros, Mexico on February 5, 2001, at 11:00 P.M., and that she was in San Antonio, Texas on February 25, 2001. The letter from [REDACTED] of Hampton Bay, New York, who claims to have known the applicant since "February, 2001" is questionable as is the letter from [REDACTED] who claims to have known the applicant and her mother since "March 1, 2001, as the applicant would have to have met both [REDACTED] only a few days after the applicant and her mother stated they were in San Antonio Texas. The applicant, in her affidavit presented by counsel on appeal, in number 11 states that the "only witness to my entry on February 5, 2003 through Brownsville, TX was my mother." The applicant's mother's affidavit presented by counsel on appeal in number 7 refers to the applicant's and her arrest date as "February 25, 2003."

There are far too many discrepancies in the documentation contained in the record and presented on appeal to provide any substantial support in establishing the applicant's continuous residence in the United States since February 13, 2001. None of these discrepancies have been explained. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*, 582, 591. The record contains insufficient credible evidence to demonstrate that the applicant has continuously resided in the United States since February 13, 2001. The applicant has not met the continuous residence described in 8 C.F.R. § 244.2 (b) and (c). Consequently, the director's decision to deny the application for temporary protected status for this reason will be affirmed.

Beyond the decision of the director, for the reasons stated above, the applicant has not established her continuous physical presence in the United States since March 9, 2001. In addition, the applicant has not established her eligibility for late registration. The record indicates that the applicant filed her application on December 14, 2002, three months after the requisite registration date ended. The applicant provided no documentary evidence to demonstrate that she met any of the criteria to qualify for late registration. Therefore, the application must also be denied for these reasons.

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.