



U.S. Citizenship
and Immigration
Services

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MM

FILE: [REDACTED]
[EAC 02 272 50483]

Office: VERMONT SERVICE CENTER

Date: **AUG 16 2005**

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.

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: 1) continuously resided in the United States since February 13, 2001; and 2) 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 provided the requested evidence. The applicant also resubmits the evidence she claimed to have provided previously in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest granted 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 applicant initially submitted an affidavit dated August 1, 2002 from [REDACTED] stating he has known the applicant since January 2001; an affidavit dated August 1, 2002 from [REDACTED] stating the he has known the applicant since January 2001; and, a letter from [REDACTED] Pastor of Iglesia de Dios in Hempstead, New York, stating that he has known the applicant since January 2001.

The record shows that the applicant filed her TPS application on August 24, 2002. On May 30, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The director found that the applicant did not respond to the notice and denied the application. However, Service records show that the applicant did submit evidence in an attempt to establish continuous residence, and, that evidence will be examined presently. In response to the notice, the applicant submitted:

1. A personal statement.
2. Statements from [REDACTED]
3. Copies of a Washington Mutual bank statement for the period from May 16, 2003, to June 16, 2003.

4. A copy of a Marriage Certificate from the Town of Hempstead dated March 7, 2003, indicating that the applicant and [REDACTED] were married in Roosevelt, New York, on February 13, 2003.

The director determined that the applicant failed to establish her eligibility for TPS and denied the application on August 26, 2003.

On appeal, the applicant states that she responded to the request for additional evidence, but that it was apparently never received. The applicant states that she is providing copies of all of the documents sent on July 3, 2003, as well as a copy of the receipt verifying that CIS received the documentation on July 5, 2003. The applicant submits a letter from [REDACTED] Deputy Town Clerk, Hempstead, New York, congratulating the applicant on her recent marriage and presenting her with an Official Certificate of Marriage. In addition, the applicant submits copies of ADP earnings statements from Sunny Marketing in Plainview, New York, dated December 5, 2002, December 19, 2002, January 30, 2003, and March 27, 2003. The applicant also provides a United States Postal Service Delivery Confirmation Receipt dated July 3, 2003 and a copy of a United States Postal Service Track/Confirm-Intranet Item Inquiry indicating a delivery to the Vermont Service Center on July 5, 2003. The applicant also resubmits evidence previously provided.

In her statement, the applicant says that the type of evidence requested is not available to her because she doesn't have a social security card. [REDACTED] all state that they have known the applicant since January 2001. However, the statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. The letter from Ms. [REDACTED] Deputy Town Clerk, Hempstead, New York, dated March 7, 2003, congratulates the applicant and her husband on their marriage. The marriage occurred, and the letter is dated, subsequent to the dates required to establish entry, continuous residence and continuous physical presence during the qualifying period. Similarly, the earnings statements and bank statement are also dated subsequent to the dates required to establish entry, continuous residence and continuous physical presence during the qualifying period. Therefore, this evidence is of little or no probative value. The United States Postal Service documents establish that the applicant did respond to the request for additional information. It appears that the evidence arrived subsequent to the 30 days provided to respond to the request for additional information, but it was received at the service center prior to the issuance of the director's decision.

The applicant, however, has not submitted sufficient evidence to establish that she has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). 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.