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U.S. Citizenship
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Services

MM

[REDACTED]

FILE: [REDACTED]
[EAC 01 189 51020]

Office: VERMONT SERVICE CENTER

Date: **AUG 16 2005**

IN RE: Applicant:

[REDACTED]

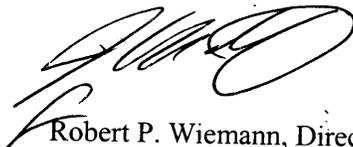
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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 (AAO) 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 had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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.
- (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 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.

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. 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, with the latest extension valid 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 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The applicant filed her initial Form I-821, Application for Temporary Protected Status, on April 26, 2001. At the time of filing her application, she failed to provide any documentation regarding her residence and physical presence in the United States.

On November 7, 2002, the director requested the applicant to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted a hospital bill, dated November 18, 2001; a checking account statement, dated March 25, 2002; and, a Sprint bill, dated March 25, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The director denied the application on June 24, 2003.

On appeal, counsel for the applicant submits the following additional documentation:

1. An affidavit, dated October 21, 2004, from the applicant, stating that she came to the United States in January 1998;
2. An affidavit, dated October 21, 2004, from [REDACTED] the applicant's sister, stating that the applicant came to the United States in January 1998;
3. An affidavit, dated October 20, 2004, from [REDACTED] stating that the applicant had rented a room in his apartment since early 1999;
4. A photocopy of a medical report, dated July 18, 1999;
5. A photocopy of a hospital bill, for services rendered on December 14 and 15, 2000; and,
6. A photocopy of the applicant's pay-stub from McDonald's of Vier's Mill, Rockville, Maryland, dated May 14, 1999.

Counsel asserts that the documentation submitted on appeal establishes that the applicant has been present in the United States and resided in Maryland since January 1998.

The applicant claims to have lived in the United States since January 1998. It is reasonable to assume that she would have a variety of contemporaneous evidence to support this claim. Affidavits from the applicant, her sister, and landlord (Nos. 1, 2, and 3, above) are not, by themselves, persuasive evidence of residence or physical presence. All of the documents submitted by the applicant in response to the director's request for evidence are dated on or after November 18, 2001, after the dates required to establish continuous residence and continuous physical presence. Similarly, all of the documents submitted by counsel on appeal (Nos. 4, 5, and 6, above) are dated before the required dates.

Based on a review of the documentation submitted, it is concluded that the applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing her application on April 26, 2001. 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.