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U.S. Citizenship  
and Immigration  
Services

MI



FILE: [REDACTED]  
[EAC 01 173 51151]

Office: VERMONT SERVICE CENTER

Date: DEC 05 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*

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 sustained and the application will be approved.

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 her continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits additional evidence.

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 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.

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 validity of the latest extension until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on April 9, 2001.

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 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).

With her initial application, the applicant submitted photocopies of: her El Salvadoran birth certificate, with English translation; her El Salvadoran passport issued by the Consulate General, New York, New York, on December 11, 1998; her card from the United States Internal Revenue Service (IRS) indicating her Individual Taxpayer Identification Number; an envelope addressed to her in New York and postmarked from El Salvador on March 8, 1995; two generic rent receipts; and, a New York State Motor Vehicle No-Fault Insurance Law, Denial of Claim Form, dated April 20, 1999, for services during the period of December 28, 1998 through February 4, 1999, for injuries she sustained in an accident on September 7, 1998.

On February 25, 2003, the applicant was requested to submit additional evidence establishing her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing.

In response, the applicant submitted: another photocopy of her passport; the original New York State Motor Vehicle No-Fault Insurance Law, Denial of Claim Form, dated April 20, 1999; and, a Park Radiology, P.C., Bronx, New York, report dated October 28, 1998, for services rendered on October 24, 1998.

The director determined that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and, therefore, denied the application on June 26, 2003.

On appeal, the applicant states that she has proof that she resided in the United States as of February 13, 2001. In support of the appeal, the applicant submits additional documentation consisting of: generic rent receipts for the months of July 2000 through April 2001; and, two United States Postal Service (USPS) receipts for money orders payable to [REDACTED] at the applicant's New York address, corresponding to the December 2000 and February 2001 rent receipts.

The applicant's passport indicates that it was issued by the Consulate General in New York, New York, on December 11, 1998, and gave her address as the address that is still listed as current on her appeal form. The passport and medical records dated through mid-1999, reflect the applicant's presence in the United States prior to the February 13, 2001, date of entry required for El Salvadorans seeking TPS benefits. The applicant has submitted the corresponding money orders that corroborate the payments of rent monies in the amount specified and payable to the individual whose name appears on the rent receipts. The money orders and corresponding rent receipts are dated in December 2000 and February 2001. Taken as a whole, the evidence of record is sufficient to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods. On appeal, the applicant has established that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c), and the findings of the director have been overcome.

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 met this burden.

**ORDER:** The appeal is sustained.