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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:

Office: VERMONT SERVICE CENTER

Date: DEC 21 2005

[EAC 02 149 52419]

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.

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

On appeal, the applicant submits a statement and 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 this TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on March 28, 2002.

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 this application, the applicant submitted photocopies of: her El Salvadoran birth certificate, with English translation; her El Salvadoran cedula dated March 29, 2000; and, a medical results report dated October 6, 2000 for services rendered on September 23, 2000, in Gaithersburg, Maryland.

On July 24, 2003, the applicant was requested to submit 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.

In response, the applicant stated that she entered the United States on September 15, 2000, and listed the places where she has lived. The applicant submitted her own affidavit that she executed on August 20, 2003. The applicant also submitted the following documentation:

1. A letter dated August 11, 2003, from [REDACTED] Assistant Property Manager, stating that the applicant had worked as a janitor at One Cabot Road, Medford, Massachusetts, since October 2000;
2. A letter dated August 18, 2003, from [REDACTED] Office Manager, [REDACTED] Cambridge, Massachusetts, stating that the applicant was employed from August 5, 2002 to the date of the letter;
3. An Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for 2002, from the [REDACTED] Cambridge, Massachusetts;
4. An NSTAR electricity billing statement addressed to the applicant in East Boston, Massachusetts, and dated August 29, 2002; and,
5. A Fleet Bank transaction statement addressed to the applicant in East Boston, Massachusetts, and dated November 24, 2002.

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 15, 2004. The director noted that the letters from acquaintances covering the initial portion of the requisite periods were insufficient to establish her continuous residence and continuous physical presence, as they were not supported by documentary evidence. The director noted that the remainder of the documentary evidence was dated as of 2002.

On appeal, the applicant reiterates the chronology of where she has lived in the United States, as stated in response to the director's request for additional evidence. In support of the appeal, the applicant submits additional documentation consisting of: additional copies of the items listed above at Numbers 2 and 3; copies of pages of a Savings Share Account, Chelsea-Provident Co-operative Bank, Chelsea, Massachusetts, reflecting transactions in July 2002 through January 2004; an earnings statement dated in August 2002; a store receipt dated March 22, 2003; and, electricity billing statements reflecting payments made dated in August and October 2002.

The letter covering the initial portion of the requisite periods of continuous residence and continuous physical presence, is dated August 11, 2003, from [REDACTED] Assistant Property Manager, and states that the applicant had worked as a janitor at One Cabot Road, Medford, Massachusetts, since October 2000. This letter, however, does not conform to the regulatory requirements for a letter verifying employment as designated under 8 C.F.R. § 244.9(a)(2)(i)(A) through (D). It is also not supported by any other corroborative evidence for this time period. The record includes a medical laboratory report dated in October 2000, from Gaithersburg, Maryland; the record, however, does not contain other sufficient corroborative evidence for the period between October 2000 and July 2002, for the initial months of the requisite timeframes. Therefore, the

applicant has not established that she has met the criteria for continuous residence and continuous physical presence, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.