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U.S. Citizenship
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Services

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FILE:



Office: Vermont Service Center

Date: JAN 18 2005

IN RE:

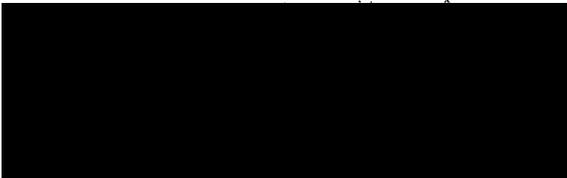
Applicant:



APPLICATION:

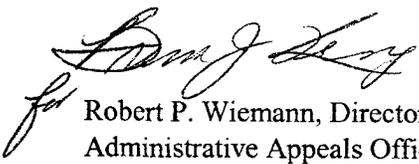
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.


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

On appeal, counsel, on behalf of the applicant, asserts the applicant's claim of eligibility for TPS and submits documentation in support of the applicant's claim.

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.

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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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).

On April 21, 2003, the applicant was requested to submit evidence establishing her continuous residence in the United States as of February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. The director noted in his April 21, 2003 request that the applicant's birth certificate was issued in El Salvador on April 23, 2001. The applicant was also requested to submit evidence to establish that she was granted advance parole to travel, and evidence that she was inspected and admitted back into the United States by an immigration officer. The applicant did not respond to the director's request. Therefore, the director determined that the applicant had failed to establish her eligibility for TPS and denied the application on August 12, 2003.

On appeal, counsel states that she replied to the director's April 21, 2003 request within the required response time. Counsel, on appeal, also provides a copy of the Express Mail receipt and her letter dated May 16, 2003, sent to the Service with regards to the director's April 21, 2003 request. A review of counsel's letter dated May 16, 2003 reflects that she requested additional time "to prepare the necessary affidavits to establish residency." However, counsel did not provide any additional documentation. Therefore, the director denied the application on August 12, 2003. The director noted in his decision to deny that as of the date of the notice, August 12, 2003, that applicant had failed to submit any evidence establishing her continuous residence and continuous physical presence in the United States during the requisite time periods. It is noted that the applicant was provided ample time, an additional 11 weeks beyond the initial timeframe, to submit any additional evidence, but she failed to do so. In addition, counsel also stated in her letter dated May 16, 2003, that the applicant did not return to El Salvador to get her birth certificate; however, a family member in El Salvador obtained the birth certificate on behalf of the applicant and mailed it to her in the United States.

Counsel, on appeal also provides the following documentation: a letter dated September 8, 2003, from [REDACTED] of the Maranatha Seventh Day Adventist Church in Manassas, Virginia, who stated that the applicant came to visit his church in August 2000, and has continuously visited his church upon "her arrival in August of 2003;" and a hand-written letter dated September 8, 2003, from Mr. [REDACTED] who stated that the applicant and her boyfriend had been working for him since in March "2001."

The letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, he does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of her involvement with the church. It is further noted that [REDACTED] indicated in his letter that the applicant has continually visited the church since her arrival in "August 2003". [REDACTED] also indicated that the applicant visited his church in August 2000. Further, the letter from Mr. [REDACTED] indicates that the applicant had worked for him since March "2001." However, it appears that this date, has been visually altered, and the original date is not legible. In addition, the statements provided by Pr. [REDACTED] and Mr. [REDACTED] regarding the applicant's claimed continuous residence and continuous physical presence in the United States are not supported by corroborative evidence. The applicant claims to have continuously resided in the United States since August 27, 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no corroborative evidence has been provided to cover the requisite time periods for Salvadoran TPS. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The applicant has not submitted sufficient credible evidence to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. The

applicant has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2 (b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

An alien applying for TPS 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.