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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 02 268 52099]

Office: VERMONT SERVICE CENTER

Date: JUL 29 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.

A handwritten signature in black ink, appearing to read "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 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, the applicant submits a brief statement.

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.

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 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 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 August 21, 2002. At the time of filing her application, the applicant indicated that she had last entered the United States in December 2000.

On October 15, 2003, 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 provided:

1. A photocopy of the identification page from her El Salvadoran passport, with a stamp indicating entry into the United States as a visitor on December 14, 2000;
2. A photocopy of a Continental Airlines baggage claim receipt, dated September 10, 2001;
3. A photocopy of a receipt, dated August 22, 2001;
4. A photocopy of a FirstFed statement, dated October 5, 2002;
5. Photocopies of Fleet account statements, dated November 2002 and July 2003;
6. Photocopies of receipts from Norton Medical Center, Norton, Massachusetts, dated June, July, August and October 2003;
7. Photocopies of earnings statements from New England Sterling, Attleboro, Massachusetts, for the pay-periods ending March 29, 2003; September 13, 2003; and, September 29, 2003;
8. A letter, dated October 21, 2003, from her purported common-law husband, [REDACTED] Cubas [REDACTED] and, [REDACTED]
9. Photocopies of documentation relating to [REDACTED]

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director denied the application on January 28, 2004. In his decision, the director noted that CIS records reflect that, although the applicant had entered the United States as a visitor on December 14, 2000, she had departed on January 4, 2001, and subsequently reentered as a visitor for pleasure on June 23, 2001.

On appeal, the applicant states that she has submitted evidence to establish her qualifying continuous residence and continuous physical presence, and that regulations allow for her brief (less than 180-day) visit outside of the United States.

A review of the record reflects that the applicant last entered the United States on June 23, 2001, not in December 2000 as claimed on her Form I-821. Although the applicant had visited the United States from December 14, 2000, to January 4, 2001, there is no documentation contained in the record to demonstrate her qualifying continuous residence and continuous physical presence in the United States as of the required dates.

Furthermore, the applicant has failed to establish that her departure from the United States from January 4, 2001 to June 23, 2001, constitutes a brief, casual, and innocent absence, as defined above.

Furthermore, the applicant's arrivals and departures as a non-immigrant visitor suggest that she had either not established a residence in the United States, or that she had made false statements in order to gain entry into the United States.

It is concluded that the applicant has 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 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.