



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 29 2005

[EAC 02 239 50161]

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.

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 that she had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts her claim of eligibility for TPS and states that she has submitted all of the proof that she has in that regard.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous physical presence in the United States since March 9, 2001. An extension of the TPS designation has been granted with validity 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 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).

The applicant initially submitted the following documentation with her TPS application:

1. A copy of a Virginia State Identification Card issued to the applicant on October 18, 2000; and,
2. An affidavit from [REDACTED] in which he stated that the applicant is his niece and that she has resided in the state of Virginia since September of 2000.

On October 7, 2003, the applicant was requested to submit evidence establishing her continuous physical presence in the United States since March 9, 2001. The applicant failed to respond to the director's Notice of Intent to Deny.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on March 17, 2004.

On appeal, the applicant reasserts claim of eligibility for TPS and submits the following documentation:

3. An affidavit from [REDACTED] in which he states that he has known the applicant as a friend since 2000, and that she resides at [REDACTED] and,
4. A lease agreement dated January 12, 2001 between [REDACTED] and [REDACTED] and [REDACTED]

The applicant has not submitted any evidence to establish her qualifying continuous physical presence in the United States since March 9, 2001. The lease agreement submitted by the applicant (No. 4 above) has little evidentiary weight or probative value. Incorporated in the lease agreement, clause 1.5 states "The following persons and no other shall reside in the apartment: Above named only." Within that same clause a handwritten

notation reads: "added 6/8/01 [REDACTED] There has been no evidence submitted to demonstrate that the landlord is knowledgeable of the handwritten notation. It is also noted that the applicant's signature is not affixed to the lease agreement as a tenant. Although the applicant's Virginia Identification Card (No. 1 above) demonstrates her presence in that state in October of 2000, it is insufficient to establish her continuous physical presence in the United States since March 9, 2001.

There has been no corroborative evidence submitted to support the statements made by [REDACTED] and [REDACTED] regarding the applicant's claimed presence in the United States since 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. Further, if this knowledge is based primarily on what the applicant told them about his entry into the United States, then their statements are essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v).

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

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish her continuous residency in the United States since February 13, 2001. For this additional reason, the TPS application must be denied.

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.