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

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JUN 06 2005

FILE:



Office: VERMONT SERVICE CENTER

Date:

[EAC 01 187 53078]

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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The case is now before the AAO on motion to reopen. The motion will be granted. The previous decision of the AAO will be affirmed.

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 found that the applicant failed to establish that she had been continuously residing in the United States since February 13, 2001, and failed to establish that she had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant, to establish her continuous residence and her continuous physical presence in the United States, submitted a letter dated March 25, 2000, from the Prince George's County Department of Social Services in Maryland, and copies of her children's birth certificates, which had been previously submitted.

The AAO dismissed the appeal reasoning that the "documents submitted throughout the application process serves only to establish the applicant's continuous residence and her continuous physical presence in the United States during 2000." The director found that these documents did not meet the criteria for continuous residence and continuous physical presence as described in 8 C.F.R. § 244.2(b) and (c).

On motion, counsel has provided additional documentary evidence, which he contends shows that the applicant has been continuously residing and has been continuously physically present in the United States during the requisite timeframes.

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 issues to be addressed in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and whether she has been continuously physically present in the United States since March 9, 2001.

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.

El Salvadorians applying for TPS must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

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. 8 C.F.R. § 244.9(a). The sufficiency of all evidence, however, 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 motion, counsel states that the applicant has established a residence pursuant to her affidavit, various school records of her children, and letters she received at her residence. Counsel also states that the applicant's children's vaccine records, school records, and other various documents addressed to the applicant at her residence are dated continuously from August 30, 1999 until the present date. Counsel submits: a Vaccine Administration Record, dated September 17, 1999, for the applicant's child; a letter dated April 11, 2003, from Lewisdale Elementary School in Hyattsville, Maryland, stating that the applicant's daughter, [REDACTED] was a student at the school "from August 30, 1999 to June 19, 2001," and that according to school records the "student's natural mother is Blanca Ponce;" a letter dated March 25, 2000, from the Prince George's City Department of Social Services in Hyattsville, Maryland; a letter dated November 20, 2000, from the Prince George's County Health Department; a Premium Finance Agreement from the Colonial Premium Credit Plan, Inc., in West Hyattsville, Maryland, dated August 10, 2001; a letter dated April 12, 2003, from the Motor Vehicle Administration, in Glen Bernie, Maryland, which shows that as of October 25, 2001, the applicant has had no points against her driving record; and, a letter dated April 11, 2003, from the "School Secretary" at [REDACTED] "Mother" [REDACTED] Elementary School in Hyattsville, Maryland, who states that the applicant's daughter [REDACTED] has "been enrolled in this school for the time period 8-26-02 to the present.

The documentation presented on motion is not sufficient in demonstrating the applicant's day-to-day living in the United States from the onset of the requisite timeframes until the time of the filing of her TPS application on April 23, 2001. As mentioned by the AAO in its decision dated March 28, 2003, the majority of the documentation contained in the record served only to establish the applicant's continuous residence and her continuous physical presence in the United States during the year 2000. The majority of the documentation presented by counsel on motion pertains to the applicant's children, or are dated prior to the onset of the qualifying timeframes. The birth certificates and other documentation pertaining to the applicant's children do not demonstrate that the applicant was continuously physically present in the United States since March 9,

2001, and that she was continuously residing in the United States since February 13, 2001. The documentation presented on motion to establish the applicant's continuous residence and her continuous physical presence during the requisite timeframes is sparse and is dated either before or more than six months after the onset of the qualifying timeframes.

Counsel has not provided any additional evidence on motion to establish that the applicant has been continuously physically present in the United States since March 9, 2001, and that she has been continuously residing in the United States since February 13, 2001. The applicant has not met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2 (b) and (c). Consequently, the decisions of the director and the AAO 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 decision of the AAO dated March 28, 2003, is affirmed.