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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: NEBRASKA SERVICE CENTER

Date:

JUN 29 2005

[WAC 01 185 54465]

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, Nebraska 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The director also denied the application because the applicant failed to provide a photo identification document to establish her identity.

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 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 § 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. Subsequent extensions of the TPS designation has 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 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 her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant initially submitted the following evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods:

1. a receipt dated January 10, 2001, from [REDACTED]
2. a receipt dated August 5, 2000, from [REDACTED] and, [REDACTED]
3. a receipt dated September 14, 2000, from [REDACTED]

On August 28, 2003, the applicant was requested to submit a photo identification document and 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, in response, submitted the filing receipts for her Form I-821, Application for Temporary Resident Status, and her Form I-765, Application for Employment Authorization.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on December 15, 2003.

On appeal, the applicant states that she didn't understand what she was being asked to submit in the Notice of Intent to Deny dated August 28, 2003. The applicant submits the following evidence:

4. a photocopy of her Iowa Non-Driver ID issued on November 14, 2001;
5. a letter from [REDACTED] dated October 15, 2001, stating that the applicant had worked for her since September 30, 1989, and that the applicant was always paid in cash;
6. a photocopy of a receipt from [REDACTED] dated January 2, 2001;
7. photocopies of [REDACTED] receipts dated March 10, 2001 and January 26, 2002, and a cash receipt from [REDACTED] dated August 12, 2000, that does not identify the name of the purchaser;
8. an employment letter dated September 9, 2003, from [REDACTED] stating that [REDACTED] social security number [REDACTED] has worked as a production worker at the [REDACTED] processing facility in [REDACTED] since November 26, 2001, along with a photocopy of her [REDACTED] employee identification card issued on November 26, 2001, and pay statements dated August 3, September 7, October 5, November 2, and December 4, 2002;

9. photocopies of Quest phone bills dated May 29, June 28, and December 29, 2002; and,
10. photocopies of generic receipts from [REDACTED] dated between July and September 2002;

The applicant has not provided sufficient evidence to establish her continuous residence and continuous physical presence in the United States prior to November 14, 2001. The employment letter from [REDACTED] No. 5 above) 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)(i). Specifically, the letter is not in affidavit form, and is not signed and attested to under penalty of perjury. Further, [REDACTED] does not provide the address where the applicant resided during the period of her employment, the exact period of employment, or her duties.

The applicant's name is hand-written on the [REDACTED] receipt dated March 10, 2001 (No. 7 above), and appears to have added after the issuance of the receipt. The applicant's name does not appear on the receipt from [REDACTED] (No. 7 above). The applicant has submitted only two receipts from the [REDACTED] dated January 10, 2001 and January 2, 2001 (Nos. 1 and 6 above), to establish her continuous residence and continuous physical presence in the United States prior to November 14, 2001. The applicant claims to have lived in the United States since September 20, 1989. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the residence and physical presence requirements 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 this basis will be affirmed.

The second issue in this proceeding is whether the applicant has provided a photo identification document to establish her identity.

Each application for TPS must be accompanied by evidence of the applicant's identity and nationality. Acceptable evidence may consist of: a passport, a birth certificate accompanied by photo identification, and/or any national identity document from the alien's country of birth bearing photo and/or fingerprint. 8 C.F.R. § 244.9(a)(1).

The applicant has provided a photocopy of her Iowa Non-Driver ID card and her employee identification card from [REDACTED], Inc., but she has failed to provide an official Salvadoran photo identification document. Therefore, the applicant has failed to establish her identity. Consequently, the director's decision to deny the application on this basis will also 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.