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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: Vermont Service Center

Date: MAR 17 2006

[EAC 02 288 51698]

IN RE:

Applicant:

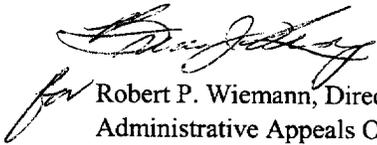
[REDACTED]

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.


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, the applicant asserts her eligibility for TPS.

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 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).

On July 29, 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. In addition, the applicant was requested to explain the discrepancy

between her claimed entry to the United States on January 23, 2001, and the date as revealed by the record of proceedings as May 18, 2001. 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 January 12, 2004.

On appeal, the applicant provides the following documentation in support of her claim: copies of her son's Social Security card and birth certificate reflecting a birth date of [REDACTED], a copy of a letter dated December 13, 2003, [REDACTED] who stated that applicant had worked for her for the past three years; a copy of an undated letter [REDACTED] and Treasurer [REDACTED] of the Pentecostal Church in Brooklyn, New York, who stated that the applicant is a member of the church and paid tithing of \$500 in 2001; and copies of the applicant's Internal Revenue Service, Form 1040, and New York State Income Tax returns for the years 2001, 2002, and 2003.

The statement provided [REDACTED] regarding the applicant's claimed continuous residence and continuous physical presence in the United States is not supported by corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support the statement; however, no corroborative evidence has been provided to cover the requisite time periods for Salvadoran TPS. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence. Further, the letter is not notarized nor in affidavit form. In addition, the letter [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, the pastor 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 his involvement with the church. Although the letter reflects that the applicant paid tithing during the year 2001, it does not provide any specific time period in which the applicant was a member of the church. Although, the tax documents may indicate that the applicant was in the United States during the year 2001, these documents do not provide the actual dates of employment during the year 2001. The burden is on the applicant to establish her continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

A review of the record proceedings reflects that the applicant was apprehended by the United States Border Patrol on May 18, 2001, at or near Hidalgo, Texas. The record also reveals that the applicant departed El Salvador with her brother, [REDACTED] on or about April 18, 2001, and traveled through Guatemala and Mexico in route to the United States. Therefore, the applicant could not have met the requirements that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001. The applicant has, thereby, 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.

It is noted that the applicant was ordered removed in absentia on July 27, 2001, at New York City, New York, based upon her apprehension near Hidalgo, Texas, on May 18, 2001.

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.