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U.S. Citizenship
and Immigration
Services

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MAY 02 2005

FILE:

[REDACTED]
[EAC 02 047 56115]

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Applicant: [REDACTED]

APPLICATION:

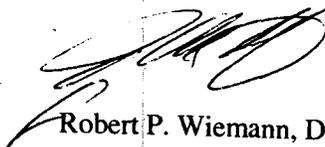
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


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 letter and additional documentation.

It is noted that the Form I-290B, Notice of Appeal, indicates that the applicant may have been assisted in the preparation of her appeal by ██████████ Chelsea, Massachusetts. However, the record does not contain a properly completed Form G-28, Notice of Entry of Appearance of Attorney or Representative, from ██████████ on the applicant's behalf. Therefore, the applicant is considered as self-represented in this matter.

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, 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 October 19, 2001. In connection with her initial application, the applicant submitted the following documentation:

1. A photocopy of an extract of her El Salvadoran birth certificate, with English translation;
2. A photocopy of her El Salvadoran national identity card (*cédula*);
3. Two letters from acquaintances stating that they have known the applicant for one year. The letters are not notarized and are not dated;
4. A photocopy of an un-translated document; and,
5. A photocopy of a generic, hand-written receipt.

On June 3, 2003, the applicant was requested 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 submitted:

6. A letter, dated July 27, 2003, from [REDACTED], the pastor of the [REDACTED] Chelsea, Massachusetts, stating that he had known the applicant since October 2000;
7. A photocopy of a receipt from [REDACTED] Chelsea, Massachusetts, containing a hand-written date of February 10, 2001;
8. A photocopy of a document entitled "Progress Notes" from [REDACTED] Massachusetts, dated December 17, 1977. The document contains a hand-written notation "LMP - 8/30/01;"
9. A photocopy of a letter, dated December 26, 2001, to the applicant from Massachusetts General Hospital [REDACTED];
10. A photocopy of a letter, dated July 22, 2003, to the applicant from MGH [REDACTED] Center, Chelsea, Massachusetts. The letter contains a hand written notation "1st visit 2001."
11. A letter, dated July 21, 2003, from an acquaintance stating that he has known the applicant for two years;
12. A photocopy of the birth certificate of the applicant's son, [REDACTED] born on April 5, 2003, in Boston, Massachusetts;
13. Photocopies of un-translated documents; and
14. Photocopies of photographs of the applicant in unidentifiable locations with unidentified persons.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on October 16, 2003.

On appeal, the applicant submits the following additional documentation:

15. Two letters, each dated October 31, 2003, from acquaintances stating that they have known the applicant for three years.

The applicant claims to have lived in the United States since October 28, 2000. It is reasonable to assume that she would have a variety of objective contemporaneous evidence to support this claim.

Nos. 1 and 2, above, establish the applicant's nationality and identity. Nos. 8, 9, and 12, indicate the applicant's physical presence in the United States on August 30, 2001; December 26, 2001; and, April 5, 2003, respectively, all of which are well beyond the dates required to establish continuous residence and continuous physical presence. The letters from acquaintances submitted by the applicant (Nos. 3 and 11) are not, by themselves, persuasive evidence of her qualifying continuous residence and continuous presence in the United States during the requisite time periods. The letter from Pastor [REDACTED] (No. 6) has little evidentiary weight or probative value as it does not provide evidence of the specific date that the applicant was officially registered as a parishioner at his church. Similarly, Nos. 4, 5, 7, 10, and 13, have little weight or value as they are un-translated, undated and/or or hand-written documents. Furthermore, the photographs provided by the applicant (No. 14) do not constitute evidence of the applicant's qualifying continuous residence and continuous physical presence as their date and place are unidentifiable.

It is concluded that the applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001. 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.