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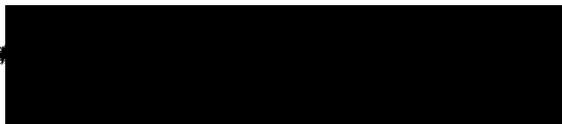
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M1



FILE: [REDACTED]
[EAC 02 232 50966]

Office: VERMONT SERVICE CENTER

Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 determined that the applicant failed to establish she had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant asserts that she entered the United States in October 1999 with her husband. The applicant also provides additional evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period.

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 as 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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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, 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 his or her own statements. 8 C.F.R. § 244.9(b).

The record shows that the applicant filed her TPS application on June 27, 2002. On June 15, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided statements from Dr. [REDACTED] and Rev. [REDACTED] pastor of St. Mary of the Annunciation Rectory, Cambridge, Massachusetts.

The director determined that the applicant failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, the applicant states that she and her husband entered the United States in October 1999. According to the applicant, prior to February 2003, she and her husband rented a room in an apartment and all bills were paid by the individual already living in the apartment, so, the applicant states that she had no bills or rental contract in her name. The applicant also submits medical records indicating treatment on November 4, 1999, November 5, 1999, November 6, 1999, January 14, 2000, March 14, 2000, May 2, 2000, May 9, 2000, January 29, 2002, February 11, 2002, March 6, 2002, March 8, 2002, March 10, 2002, March 18, 2002, March 19, 2002, May 29, 2002, April 11, 2003, and June 26, 2003. The applicant also submits another letter from [REDACTED] who states that the applicant has been a patient since November 1999. The medical records establish that the applicant was present in the United States prior to February 13, 2001, but offer no evidence of continuous residence or

continuous physical presence in the United States from May 9, 2000 to January 29, 2002 and from May 29, 2002 to April 11, 2003. [REDACTED] can only attest to the fact that he has treated the applicant since November 1999, and that she was in the United States on the dates he treated her. He cannot establish that the applicant maintained continuous residence and continuous physical presence during the qualifying period. Therefore, the evidence is of little or no probative value.

Additionally, CIS records indicate that the applicant was initially admitted to the United States on March 20, 1999, as a nonimmigrant B-1 visitor with stay authorized to March 31, 1999. The applicant subsequently departed the United States on March 29, 1999, via Continental Airlines Flight #723. She was readmitted to the United States at Atlanta, Georgia, on August 6, 2001, as a nonimmigrant B-2 visitor with stay authorized to February 5, 2002.

The applicant indicated on the Form I-821 that she entered the United States without inspection near Laredo, Texas in October 1999. As previously stated, the applicant's medical records from Windsor Street Health Clinic indicates she was treated at that clinic in November 1999 and in January, March, and May 2000, but her medical records do not reflect any visits to the clinic from May 2000 and January 29, 2002. Since the applicant was clearly outside the United States during at least a portion of the period from March 9, 2001 to August 6, 2001, she cannot establish continuous physical presence in the United States during the requisite period.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). 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.