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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:

[REDACTED]
[EAC 02 271 51853]

Office: VERMONT SERVICE CENTER

Date: MAY 09 2005

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.

A handwritten signature in black ink, appearing to read "R. 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 (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, counsel for the applicant submits a brief and additional documentation.

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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 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).

In support of her initial Form I-821, the applicant submitted an affidavit, dated March 16, 2002, from [REDACTED], stating that the applicant had been renting a room in his house since February 1, 2001, at a monthly rent of \$400.00.

The director determined that the affidavit submitted was insufficient to establish the applicant's eligibility for TPS. Therefore, on April 17, 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. The director specifically advised the applicant that acceptable evidence might include, but is not limited to, employment or school records, rent or medical receipts, bank or insurance documents, medical or utility bills, or other similar materials. In response, the applicant submitted an affidavit from [REDACTED], dated May 7, 2003, stating that the applicant was employed by her on a temporary basis from February 13, 2001 until March 29, 2001. The applicant also submitted a letter from Ms. [REDACTED] physician, dated January 15, 2001, stating that Ms. [REDACTED] had been in pain for several months due to an umbilical hernia. The physician further indicated that the hernia was repaired and that, "in a week or so [REDACTED] should be feeling completely back to normal."

The director determined that the documentation submitted was insufficient to establish the applicant's eligibility for TPS and denied the application on July 10, 2003.

On appeal, counsel for the applicant submits a variety of documentation relating to the applicant's residence and physical presence in the United States from October 2001 through May 2002. In support of the applicant's claim to qualifying continuous residence from February 13, 2001 through October 2001, and continuous physical presence from March 9, 2001 through October 2001, counsel submits eight affidavits from the applicant's acquaintances.

Counsel states that when the applicant came to the United States, she had no social security card, no driver's license, no work permit, no bank account, and no bills in her name, and that she depended on her fiancé, [REDACTED] for economic support and shelter. Counsel asserts that: "[W]ith this in mind, it is reasonable that [the applicant] would not have substantial documentary evidence to support the fact that she continuously resided in the United States from her arrival to October [2001]." Counsel implores the AAO "to consider the number of affidavits, the level of detail provided in each affidavit, and [the applicant's] circumstances upon her arrival."

The applicant claims to have lived in the United States since January 28, 2001. It is reasonable to assume that she would have contemporaneous evidence to support this claim; however, no such evidence has been provided for the time period from her claimed date of entry in January 2001 through October 2001, other than affidavits from acquaintances. Affidavits are not, by themselves, persuasive evidence of residence or physical presence.

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. She has, therefore, 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 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.