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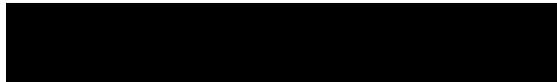
Office: VERMONT SERVICE CENTER

Date: MAY 10 2005

[EAC 02 002 54369]

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, 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.

On appeal, the applicant submits a letter and additional documentation.

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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reflects that the applicant filed her initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on September 4, 2001.

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 his or her own statements. 8 C.F.R. § 244.9(b).

On July 1, 2003, the applicant was requested to submit evidence to establish her qualifying continuous residence in the United States since February 13, 2001. In response, the applicant provided documentation, including photocopies of the following:

1. An American Airlines boarding pass indicating that she traveled from Los Angeles, California, to Washington, D.C., on March 17, 2001;
2. Her earnings statements from Chipotle Mexican Grill, Inc., Denver, Colorado, for the pay periods ending April 8, 2001; April 22, 2001; May 6, 2001; and, May 20, 2001. The social security number noted on the earnings statements [REDACTED];
3. Her social security card, number [REDACTED];
4. The identification page from her Salvadoran passport, issued in El Salvador on November 10, 2000; and,
5. Her Virginia identification card, issued on August 3, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence in the United States during the requisite time period and denied the application on September 8, 2003.

On appeal, the applicant submits photocopies of the following additional documentation:

6. Her 2001 and 2002 Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Returns.

Based on the documentation submitted, it appears that the applicant was not in the United States as of February 13, 2001, the date required to establish continuous residence. At the time of filing her initial Form I-821, the applicant indicated that she had entered the United States on March 1, 2001, and all of the documentation submitted by the applicant to establish her residence in the United States is dated on or after March 17, 2001. Consequently, the director's decision to deny the application will be affirmed.

It is further noted that there is a discrepancy encountered in the documentation presented pertaining to the applicant's social security number (Nos. 2 and 3, above). This discrepancy calls into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Beyond the decision of the director, the applicant has not established her continuous physical presence in the United States since January 5, 1999. Therefore, application also may not be approved for this reason.

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.