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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
[EAC 02 293 51571]

Office: VERMONT SERVICE CENTER

Date: **MAY 25 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: 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 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: (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.

On appeal, the applicant asserts that she does qualify for TPS status and that her legal representative failed to inform her of the Notice of Intent to Deny. The applicant further asserts that had she been so informed, she would have submitted the evidence that she now submits on appeal.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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. An extension of the TPS designation has been granted 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 June 30, 2003, the applicant was requested to submit evidence establishing her residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant's representative, in response, provided the following documentation:

1. An affidavit of support from [REDACTED] October 1, 2002, in which he stated that he knew the applicant as a co-tenant since January of 2000;
2. An affidavit of support from [REDACTED] October 1, 2002, in which he stated that he knew the applicant as a co-tenant since January of 2000; and
3. A copy of a U.S. postal money order receipt dated September 5, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on January 2, 2004. The director noted that the evidence submitted in response to the Notice of Intent to Deny was the same evidence initially submitted with the TPS application.

On appeal, the applicant reasserts her claim and submits the following documentation:

4. An affidavit of support from [REDACTED] dated January 23, 2004, in which she states that the applicant has been the baby-sitter for her two children from December of 2000 to November of 2001;
5. An affidavit of support from [REDACTED] dated January 22, 2004, in which he states that the applicant was his tenant from January 1, 2001, to July 14, 2003;
6. An affidavit of support from [REDACTED] dated January 20, 2004, in which she states that the applicant has been her tenant from July 15, 2003, to November 6, 2003;
7. An affidavit of support from [REDACTED] dated January 20, 2004, in which she states that the applicant has been her tenant at [REDACTED] November 7, 2003;
8. A letter of employment from [REDACTED] president of [REDACTED] Corp., dated January 20, 2004, in which she states that the applicant has been working in the salon since December 15, 2001;
9. A letter from the County of Nassau, CASA, dated January 20, 2004, in which the Adult Education Coordinator states that the applicant has been an active participant in their adult education program studying English As A Second Language since September of 2002;
10. An affidavit of support from [REDACTED] dated January 20, 2004, in which he states that he has been a friend of the applicant and has known her since January 2001;
11. An affidavit of support from [REDACTED] dated January 22, 2004, in which he states that he has known the applicant since December of 2000 and that she is sincere, honest, and hardworking; and
12. IRS Form 1040, U.S. Individual Income Tax Return with attachments for the years 2001 and 2002.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to September 9, 2002. The applicant submitted five affidavits (Nos. 1, 2, 5, 6, and 7 above) in support of her contention that she has continuously resided in the United States since January of 2000. Affidavits alone are insufficient to demonstrate continuous residency. It is reasonable to expect that the applicant, having resided in the United States since January of 2000, would have some other type of contemporaneous evidence (rent receipts, cancelled checks, or money order receipts) to support the affidavits; however, no such evidence has been provided. Likewise, the applicant submitted two letters of employment, (Nos. 4 and 5 above) which are not supported by any contemporaneous evidence such as payroll records, pay stubs, or cancelled checks. The letter from the County of Nassau, CASA (No. 9 above) does not demonstrate the applicant's continuous residency or physical presence in the United States from February 13, 2001. Although the IRS tax records (No. 12 above) demonstrate that the applicant reported income received in 2001 and 2002, there is nothing in the documents to show when she began employment and how long she was employed by [REDACTED].

The other evidence submitted by the applicant fails to document her continuous physical presence and continuous residency in the United States since February 13, 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.

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.