

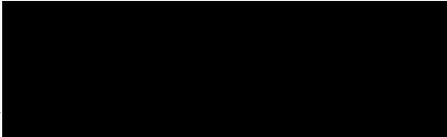


U.S. Citizenship  
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Services

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FILE: [REDACTED]  
[SRC 01 219 54973]

Office: VERMONT SERVICE CENTER

Date: OCT 04 2005

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 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: 1) she was a national of El Salvador; 2) she continuously resided in the United States since February 13, 2001; and 3) she had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts her claim of eligibility for TPS.

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).

The first issue in this proceeding is whether the applicant has submitted sufficient evidence to establish that she is a national of El Salvador.

The applicant claims to be 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.

Persons applying for TPS offered to El Salvadorans must demonstrate that he or she is a citizen or national of a state designated under section 244(b) of the Act.

The regulations at 8 C.F.R. § 244.9 state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

#### Sec. 244.9 Evidence.

- (a) *Documentation*. Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful

efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

On March 15, 2004, the applicant was requested to submit evidence to show that she is a national of El Salvador.

The director determined that the applicant had failed to establish that she was a national of El Salvador and denied the application on June 17, 2004.

On appeal, the applicant asserts that she is a national of El Salvador. The record of proceedings contains the following documentation:

1. A translated copy of the applicants El Salvadoran birth certificate and a copy of the original birth certificate bearing the applicant's name, nationality, mother's name, and date of birth; and,
2. A copy of the applicant's El Salvadoran Cedula bearing a photograph of the applicant.

On review of the record, the applicant has provided sufficient evidence to establish that she is a national of El Salvador. The applicant has provided a copy of her El Salvadoran birth certificate along with an English translation, bearing the applicant's name, date of birth, place of birth, and mother's name. The applicant also submitted a copy of her El Salvadoran Cedula that contains her photograph, name, and nationality. The applicant has submitted sufficient evidence to establish that she is a national of El Salvador. Therefore, the director's decision with respect to this issue will be withdrawn.

A second issue in this proceeding is whether the applicant has submitted sufficient evidence to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

The applicant initially submitted the following documentation along with her TPS application:

3. An affidavit from [REDACTED] in which they stated that they possess personal knowledge of the applicant's continuous physical presence in the United States since March 9, 2001.

On March 15, 2004, the applicant was requested to submit evidence establishing her continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on June 17, 2004.

On appeal, the applicant reasserts her claim of eligibility for TPS and submits the following documentation:

4. An affidavit from [REDACTED] in which he states that he rented a room to the applicant located at [REDACTED] North Carolina from December 5, 2000 to August 15, 2001;
5. A copy of IRS Form 1040, U.S. Individual Income Tax Return for 2002 bearing the applicant's name and Lynbrook, New York address; and,
6. A copy of IRS Form 1040, U.S. Individual Income Tax Return for 2003 bearing the applicant's name and Lynbrook, New York address.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, or continuous physical presence in the United States since March 9, 2001. The tax records submitted are for the tax years 2002 and 2003, and are therefore subsequent to the applicable dates of February 13, 2001 and March 9, 2001 respectively.

There has been no corroborative evidence submitted to support the statements made by [REDACTED] and [REDACTED] regarding the applicant's claimed presence in the United States since November of 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. Further, Mr. [REDACTED] has not demonstrated that his knowledge of the applicant's presence in the United States is independent of what the applicant told him about her entry into the United States. If not, then this statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. Without corroborative evidence, affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and

attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(a)(2)(i) and (v).

The applicant has failed to establish that she has met the continuous residence and continuous physical presence 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.