



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: Vermont Service Center

Date: **OCT 31 2005**

[consolidated with [REDACTED]
[EAC 02 001 53881]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

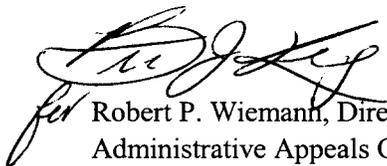
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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.


for Robert P. Wieman, 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 her qualifying continuous residence in the United States as of February 13, 2001.

On appeal, counsel, on behalf of the applicant, asserts the applicant's claim of eligibility for TPS and submits evidence in support of her claim.

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.

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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, 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 December 2, 2002, the applicant was requested to submit evidence establishing her continuous residence in the United States as of February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing her application. In response, the applicant submitted some evidence in an attempt to establish her continuous residence and continuous physical presence in the United States during the qualifying periods. The director stated in the decision that the record substantiates the applicant's residence in the United States from November 1996 through July 1999; however, he determined that the applicant had failed to submit sufficient evidence to establish her continuous residence as of February 13, 2001. Therefore, the director denied the application on March 18, 2003.

On appeal, counsel states that the applicant has been in the United States since 1996. Counsel further states that the applicant has been employed in the United States since February 1, 2001 and provides the following evidence in support of the applicant's eligibility for TPS: an affidavit dated April 18, 2003, from [REDACTED] the applicant's husband, who states that the applicant has been residing with him in the United States since 1996; an affidavit dated April 18, 2003, from [REDACTED] who stated that he met the applicant in 1998 and has provided transportation for her since that date; an undated letter from [REDACTED] President of [REDACTED] Incorporated, who stated that the applicant has worked for him since February 1, 2001; a copy of a letter addressed to the applicant from [REDACTED] reflecting a past due account for services rendered on May 19, 1999; copies of the applicant's Form 1040A, U.S. Individual Income Tax Return, and her Massachusetts Resident Income Tax Return for the year 2001; and copies of her and her husband's Internal Revenue Service, Form W-2, Wage and Tax Statements for the year 2001.

The statements provided by her husband, [REDACTED] and [REDACTED] regarding the applicant's claimed residence in the United States are not supported by corroborative evidence for the requisite time periods for TPS. Affidavits from relatives and acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence in the United States. The employment letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of her employment. Although the tax documents may suggest that the applicant was in the United States during the year 2001, these documents do not provide the actual dates of employment. The applicant has not provided any other corroborative evidence such as earnings statements or paycheck stubs from her employer. The letter from Gragil Association, Inc. pre-dates the beginning of the requisite time period for continuous residence in the United States by almost two years. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous residence requirements described in 8 C.F.R. § 244.2 (c). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish her qualifying continuous physical presence in the United States since March 9, 2001, to the date of filing her application on August 31, 2001. 8 C.F.R. § 244.2(b). Therefore, the application will also be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.