

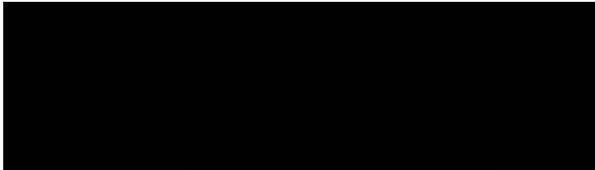


U.S. Citizenship  
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Services

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MI



FILE: - [REDACTED]  
[EAC 02 282 52182]

Office: VERMONT SERVICE CENTER

Date: DEC 08 2006

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:



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, Chief  
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) entered the United States prior to February 13, 2001; 2) continuously resided in the United States since February 13, 2001; and 3) 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 program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. Subsequent extensions of the TPS designation have been granted with the latest extension valid until September 9, 2007, 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 applicant initially submitted the following documentation with her TPS application:

1. An affidavit from [REDACTED] in which he stated that he has known the applicant since December of 2000 and that the applicant resided at [REDACTED] Texas until she moved to New York;
2. An affidavit from [REDACTED] which she stated that she has known the applicant since December of 2000 and that the applicant resided at [REDACTED] Texas until she moved to New York;
3. A letter from [REDACTED] which he stated that he has known the applicant for ten years and that she arrived in New York in August of 2001

On September 23, 2004, the applicant was requested to submit evidence establishing her continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. 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 December 13, 2004.

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

4. An affidavit from [REDACTED] in which she stated that the applicant rented a room from her at [REDACTED] from January of 2001 to February of 2002;
5. An affidavit from [REDACTED] of The Church of God of Prophecy in which he stated that he has known the applicant since January of 2001;
6. An affidavit from [REDACTED] in which she stated that that she has known the applicant since 2001 and that they had been roommates for the past four years;
7. An affidavit from [REDACTED] in which he stated that he has known the applicant since 2001 and that they both attend First United Methodist Church of Central Islip, New York;
8. An affidavit from [REDACTED] in which he stated that he has known the applicant since January of 2001 and that they both attend First United Methodist Church of Central Islip, New York;
9. An affidavit from [REDACTED] in which she stated that she has known the applicant since January of 2001 and that they worked as babysitters together from June of 2001 to December of 2002;
10. An affidavit from [REDACTED] in which he stated that he has been friends with the applicant since January of 2001; and.
11. An affidavit from [REDACTED] in which he stated that he has known the applicant since 2001 and that she has been renting a room from him at [REDACTED] since November of 2003.

The director denied the applicant's motion on June 15, 2005, because she had failed to submit any documentation to support the affidavits she submitted as evidence.

On appeal to the AAO, the applicant submitted the following documentation:

12. An affidavit from [REDACTED] in which they state that the applicant lived with them at [REDACTED] Texas from December of 2000 to August of 2001, and had no bills because she lived under their care;
13. An affidavit from [REDACTED] in which she states that she has known the applicant since she moved to Texas and that the applicant was under the care [REDACTED] and [REDACTED];
14. A student attendance roster from Brentwood Union Free School in which it is indicated that two of the applicant's children have been in attendance since September 6, 2001, and one child has been in attendance since August 27, 2003;
15. Copies of letters from Immunization Action Program located in Hauppauge, New York in which it is indicated that two of the applicant's children receive regular blood transfusions;

16. A copy of two vaccine administration records from SB Primary Care at Islip for two of the applicant's children which depict the history of their vaccine shots;
17. Copies of Health First medical cards containing the names of the applicant's three children and dated October 1, 2001, with a recertification date of September 30, 2002;
18. A copy of a medical accounts statement from University Hospital S.U.N.Y. bearing the applicant's son's name and dated October 8, 2001;
19. A copy of a letter from Health First dated October 1, 2001 indicating a change in the applicant's son's medical doctor;
20. A copy of an application from Child Health Plus dated September 6, 2001, and bearing the applicant's name;
21. A copy of a tuition statement from Suffolk County Community College dated July 17, 2002, and bearing the applicant's name as student; and,
22. A copy of a letter from the Social Security Administration dated January 17, 2002, and bearing the applicant's name.

The remaining evidence is dated subsequent to the time periods in question.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the period from February 13, 2001, to September 6, 2002. There has been no corroborative evidence submitted to support the statements made by the affiants (see numbers 1 through 13 above). It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence and continuous physical presence. The immunization records (see numbers 15 and 16 above) contain a variety of dates and do not specify the location in which the immunizations were administered. All other documents submitted by the applicant as evidence are dated subsequent to February 13, 2001, and March 9, 2001, and therefore cannot be used to establish the applicant's presence in the United States on or before the applicable dates.

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.