

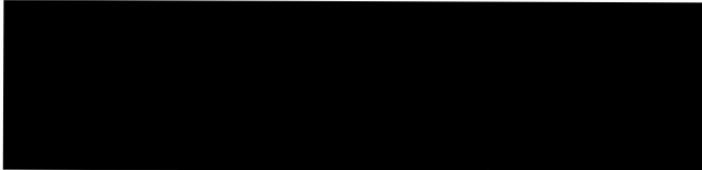
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
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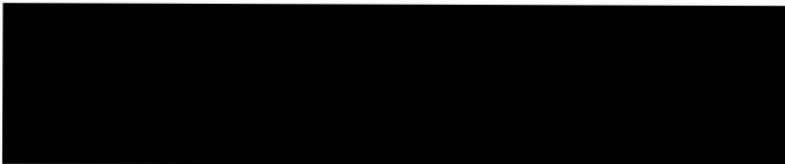
Office: VERMONT SERVICE CENTER

Date: DEC 03 2007

IN RE: Applicant: [REDACTED]

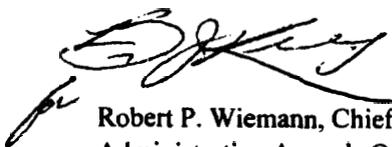
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. 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 applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the applicant's Form I-821, Application for Temporary Protected Status, because the applicant had not established that she had continuously resided in the United States since February 13, 2001 or that she had been continuously physically present in this country since March 9, 2001.

On appeal, counsel states that the applicant submitted sufficient proof of her physical presence in the United States before February 13, 2001 and continuous physical presence from March 9, 2001 through the date she filed her application. Counsel further states that requesting more evidence was not necessary to establish a favorable decision. Counsel submits documentation for consideration.

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 designated by the Attorney General 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f) (1) Registers for TPS 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.

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 El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed her application with Citizenship and Immigration Services on March 21, 2002.

On initial submission, the applicant forwarded the following documentation to establish her continuous residence and continuous physical presence during the required periods:

- (1) Copies of seven earning statements from Bethel Industries in Jersey City, New Jersey, for the pay periods from November 5, 2000 to November 11, 2002, November 12, 2000 to November 18, 2000, January 28, 2001 to February 3, 2001, March 4, 2001 to March 10, 2001, April 22, 2001 to April 28, 2001, July 29, 2001 to August 4, 2001, and September 23, 2001 to September 29, 2001.
- (2) A copy of a certificate of birth for the applicant's son under the name [REDACTED] showing he was born in Jersey City, New Jersey, on September 27, 1995, issued on May 23, 2001.
- (3) A copy of a certificate of birth for the applicant's son under the name [REDACTED] showing he was born in Jersey City, New Jersey, on September 27, 1995, issued on October 25, 1995.

It is noted that when the applicant filed her Form I-821 on March 21, 2002, she listed a son named [REDACTED] born on September 27, 1995. The record does not reflect why the applicant's son has two birth certificates showing him with different names on each certificate (Items #2 and #3 above) or why those names are different from the name that she shows for him on her Form I-821. Additionally, the record shows that the applicant resided in the United States at least part of the time from the 1990's until sometime in 2000.

On December 27, 2004, the applicant was requested to submit additional evidence establishing her continuous residence and continuous physical presence in the United States. The applicant did not respond.

On appeal, counsel states that requesting more evidence was not necessary to establish a favorable decision and merely re-submits copies of the seven earning statements and two birth certificates listed above.

This evidence does not establish that the applicant had continuously resided in the United States from February 13, 2001 and been continuously physically present since March 9, 2001 until March 21, 2002, the date she filed her application. It is determined that the applicant has not provided convincing evidence to establish her continuous residence and continuous physical presence during the required time periods. 8 C.F.R. § 244.2 (b) and (c). Consequently, the director's decision is affirmed for these reasons.

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 temporary protected status has the burden of proving that he or she meets the requirements cited 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.