



U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: BLOOMINGTON

Date: **JAN 17 2007**

[SPM 04 202 00001]
[WAC 02 256 52254]

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. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Bloomington, Minnesota, 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 district director determined that the applicant failed to establish 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. The director, therefore, denied the application.

On appeal, counsel for the applicant asserts that the applicant has established her continuous residence and continuous physical presence during the qualifying period. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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 as 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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest extension granted 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 record shows that the applicant filed her TPS application on November 29, 2001. On November 18, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. **The applicant, in response, provided a copy of a Money Gram receipt with an unreadable date, a letter from [REDACTED] and an earnings statement from [REDACTED] Inc. Minneapolis, Minnesota dated September 14, 2001.**

The district director determined that the applicant failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the district director denied the application.

On appeal, counsel for the applicant states that the applicant has proven her requisite continuous presence and continuous physical presence in the United States during the qualifying period. The applicant also provides additional evidence. According to counsel, the fact that the applicant was issued employment authorization indicates that "the granting officer at the time was satisfied" with the applicant's continuous residence and continuous physical presence. However, contrary to counsel's assertion, the granting of employment authorization is done in order for the applicant to work while a decision is being rendered on his or her application. Granting employment authorization does not implicitly or explicitly indicate that the application has been approved.

The applicant also provides the following:

1. Statements from [REDACTED]
2. Copies of earnings statements dated August 26, 2001, September 16, 2001, September 23, 2001 and November 7, 2001, February 8, 2002, March 15, 2002, April 5, 2002, April 26, 2002, May 24, 2002, June 28, 2002, July 12, 2002, September 6, 2002, September 27, 2002, October 11, 2002, November 8, 2002, December 27, 2002, January 3, 2003, January 10, 2003, February 14, 2003, March 29, 2003, April 18, 2003, May 3, 2003, June 20, 2003, September 5, 2003, September 12, 2003, October 31, 2003, November 7, 2003, December 12, 2003, and January 2, 2004.
3. Copies of unsigned 2001 and 2002 Internal Revenue Service (IRS) Form(s) 1040, U.S. Individual Income Tax Return, and a 2001 IRS Form W-2 Wage and Tax Statement.
4. Copies of Money Gram receipts dated September 8, 2001, and September 21, 2001

The applicant also resubmitted evidence previously provided.

In response to the request for additional evidence the applicant submitted a Money Gram receipt, a letter from Ms. [REDACTED] and, an earnings statement from [REDACTED]. The receipt has an unreadable date and is therefore of no probative value. In her statement, Ms. [REDACTED] stated that she employed the applicant from February 2001 to July 2001. However, this statement 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 his employment. It is further noted that the affiant did not indicate the exact dates of employment, or the location where the applicant worked. The earnings statement is dated September 14, 2001 and is subsequent to the dates required to establish continuous residence and continuous physical presence during the qualifying periods.

Mr. [REDACTED] and [REDACTED] and Ms. [REDACTED] state that they have known the applicant since December 2000. Ms. [REDACTED] and Mr. [REDACTED] state that they have known the applicant since January 1, 2001. However, these statements are not supported by any corroborative evidence. 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 residence or physical presence. Ms. [REDACTED] Human Resource Manager AmeriPride, Minneapolis, Minnesota, states that her company employed the applicant since February 25, 2002. However, this employment occurred subsequent to the qualifying dates to establish continuous residence. Similarly, all of the remaining evidence provided by the applicant, other than the 2001 tax documents, are dated subsequent to the requisite dates to establish continuous residence and continuous physical presence. Therefore, this evidence alone cannot establish the applicant's continuous residence since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The 2001 tax documentation indicates the applicant was present in the United States in 2001, but does not establish that she was present since or before February 13, 2001. Therefore, this information is also of little or no probative value.

The applicant has not submitted sufficient evidence to establish that she has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant filed her initial TPS application on November 29, 2001 and the applicant has provided insufficient evidence to establish her eligibility for late registration. Therefore, the application must be denied on this basis as well.

An alien applying for temporary protected status 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.