



U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

MAR 02 2007

[EAC 02 293.52139]

IN RE:

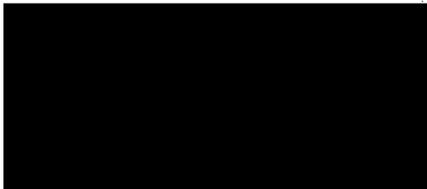
Applicant:



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 he continuously resided in the United States since February 13, 2001; and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts the applicant's 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).

On December 9, 2003, 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 March 10, 2004.

The applicant appealed the director's decision to the AAO on March 26, 2004. The AAO remanded the case to the director on August 25, 2005, because he had not specified the reasons for his denial. The director denied the application on March 28, 2006, because the applicant failed to submit evidence to establish her continuous residence and continuous physical presence in the United States during the requisite time period.

On appeal, counsel states that the applicant has been present in the United States since before February 13, 2001, and therefore qualifies for TPS. The applicant submits the following documentation:

1. An affidavit from [REDACTED] in which he stated that the applicant is his sister-in-law and that he has known her since December 15, 2000;
2. An affidavit from [REDACTED], in which he stated that he lives at the same address as the applicant and that he has known her since December 15, 2000;
3. An affidavit from [REDACTED], in which he stated that the applicant is his live in friend, that he has known her since December 30, 2000, and that she has not worked because he has supported her financially;
4. An affidavit from [REDACTED], in which she stated that she has known the applicant since December 26, 2000;
5. A letter from the pastor of Westbury Hispanic Seventh-day Adventist Church in which he stated that the applicant is a member of the church and that he has known her since 2001;
6. An affidavit from [REDACTED], in which he stated that he lives at the same address as the applicant, and that he has known her since December of 2000;
7. A copy of medical appointment records dated June 27, 2002 through April 14, 2006;
8. Copies of a statement from Nassau Health Care Corp. dated June of 2002, June of 2003, and March of 2006, and bearing the applicant's name;
9. A copy of a personal banking statement from The Bank of New York dated July 24, 2003, and bearing the applicant's name as customer;
10. Copies of post marked envelopes bearing the applicant's name and dated June and August of 2002;
11. A copy of the applicant's interim permit issued by the New York State Department of Motor Vehicles on November 20, 2003;
12. A copy of a birth certificate from the State of New York acknowledging the birth of the applicant's daughter on February 5, 2003;
13. A copy of a birth certificate from the State of New York acknowledging the birth of the applicant's daughter on November 6, 2004;
14. A copy of a bank statement from Citibank bearing the applicant's name as customer and dated June 6, 2005;
15. Copies of sonogram ex-rays bearing the applicant's name and dated August of 2002 and January of 2003;
16. An affidavit from [REDACTED] in which he stated that he has known the applicant as a friend since December 30, 2000;
17. A copy of a money gram dated August of 2005 and bearing the applicant's name as sender;
18. Copies of express mail receipts dated March of 2004 and March of 2006, and bearing the applicant's name; and,
19. Copies of income tax documents dated 2002 through 2006 and bearing the applicant's name.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant submitted a number of affidavits (see numbers 1 through 6, and 16 above) in which the affiants stated that they have known the applicant to reside in the United States since December of 2000. However, there has been no corroborative evidence submitted to support the affiant's statements. The applicant claims to have been present in the United States since December of 2000. It is reasonable to expect that she 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. 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 pastor's letter (see number 5 above) 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)(v). Specifically, it is not in affidavit form as required, and the pastor does not explain the origin of the information to which he attests, nor does he provide the specific date to which the applicant became a member of his congregation.

All other evidence submitted by the applicant is dated 2002 through 2006 and does not serve to establish the applicant's presence in the United States in 2001. 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.