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U.S. Citizenship
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Services

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FILE:

[REDACTED]
[EAC 02 255 50764]

Office: VERMONT SERVICE CENTER

Date:

JAN 28 2008

INRE:

Applicant: [REDACTED]

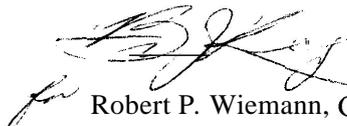
APPLICATION:

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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: 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 for the applicant reasserts the applicant's claim of eligibility for TPS, and presents a brief and additional evidence.

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 March 9, 2009, 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** _____ in which she stated that the applicant arrived in the Un' ed States on January 30, 1999, and that she has been babysitting the affiant's son, _____ since January of 1999;
2. An affidavit from _____ in which she stated that she has known the applicant for ten years and that she received a telephone call in January of 1999 that stated that the applicant had arrived in the United States;
3. An affidavit from _____ in which he stated that he met the applicant in the United States on or about January of 1999, and that they see each other regularly while attending the same church at Our Lady of Loretto, Hempstead, New York; and,
4. An affidavit from _____ in which he stated that he met the applicant on or about January of 1999, has known her for more than ten years, and has attended church services with her at Our Lady of Loretto, Hempstead, New York.

On May 22, 2003, the applicant was requested to submit evidence to establish her continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant submitted the following documentation:

5. An affidavit from _____ of _____ Hempstead, New York, in which she stated that the applicant rented a room/apartment from her from March 4,2001 to June 4,2001; and,
6. A letter **from** _____ f _____ New York, in which he states that the applicant's address is _____ Uniondale, New York, and that she has been a regular customer since 2000.

The director denied the application on July 18, 2003, because the applicant had failed to submit sufficient evidence to establish her eligibility for TPS.

The applicant submitted an appeal. The Vermont Service Center director requested that the case be remanded to the Vermont Service Center for further review. The AAO remanded the case accordingly.

The applicant reasserted her claim of eligibility for TPS and submitted the following documentation:

7. An affidavit from _____ of _____ in which he stated that he has been acquainted with the applicant since February 10, 2001, that the applicant resides at _____ Uniondale, New York, and that the applicant cleans his office every Monday for five hours;
8. An affidavit from _____ in which she stated that she has known the applicant since February of 2001, that the applicant resides at _____ Uniondale, New York, and that the applicant cleans her house and does laundry for her twice a week; and,
9. A letter dated July 31, 2003 from _____ of Parish of our Lady of Loretto, Hempstead, New York, in which he stated that the applicant resides at _____ Uniondale, New York, and that she has been a registered parishioner for over three years.

The Vermont Service Center director determined that the applicant had failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States and again denied the application on February 15,2005.

On appeal, the applicant submits the following documentation:

10. A copy of a letter from _____, in which the manager states that the applicant has been a client of the company's courier services since December of 2000 and uses the services bi-weekly;
11. An Urgente Express money order receipt dated December 20, 2000, bearing the applicant's name as sender with her address listed as _____ Uniondale, New York;
12. An affidavit from _____ of the _____ who states that he met the applicant in 2001 and that she would clean his office once a month for a friend who was the regular office cleaner;

13. A copy of a rent receipt dated January 30, 2001, and bearing the applicant's name as renter of Uniondale, New York;
14. A copy of a bank check dated April 20, 2001 for babysitting services rendered by the applicant for an
15. An affidavit from in which she states that she has known the applicant since 2000 and that the applicant frequently accompanies her niece who cleans her house;
16. A copy of a 2001 Form-1040, Individual Income Tax Return, signed and dated November 14, 2007; and,
17. An affidavit from signed on November 13, 2007, stating that she has known the applicant for the past 6 years.

There has been no corroborative evidence submitted to support the statements made by the affiants listed above. Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence in the United States during the requisite time periods. There has been no corroborative evidence submitted to support the copies of the receipts submitted by the applicant. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying residence or physical presence in the United States. The only tax return submitted was for year 2001 and was signed on November 14, 2007. However, the tax return does not, by itself, establish that the applicant was in the United States during the requisite period in 2001. The applicant claims to have lived in the United States since January of 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

All other evidence submitted is dated prior to the requisite time period and cannot be used to establish the applicant's eligibility. 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.

It is noted that although the applicant's fingerprints were initially rejected, she has subsequently submitted appropriate police clearance records from Nassau County Police Department, New York, dated January 14, 2005.

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 not met this burden.

ORDER: The appeal is dismissed.