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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:

[EAC 07 012 72225]

OFFICE: Vermont Service Center

DATE: OCT 02 2008

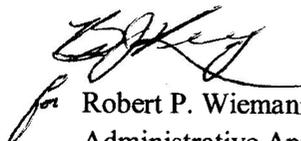
IN RE: Applicant:

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.


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 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 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.

On appeal, counsel states that the applicant is filing her TPS application under the late initial filing provision and that she had a pending asylum case at the time of the initial registration 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 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. The designation of TPS for El Salvadorans has been extended several times, 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).

On October 15, 2007, 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 was also requested to submit a photo identity document. The applicant, in response, provided the following documentation:

1. A copy of her Salvadoran passport issued in Washington, D.C., on October 6, 2005;
2. A copy of her birth certificate with an English translation;
3. A copy of her Immunization Record with the earliest date recorded on November 27, 2001;
4. Copies of her school record from High Point High School for the years 2001 to 2003;
5. A copy of her School ID from High Point High School for the year 2005; and,
6. Copies of pay stubs from Chevy Chase Supermarket dated March 19, 2003 and January 21, 2004.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on May 20, 2008.

On appeal, counsel reasserts the applicant's eligibility for TPS and submits the following documentation:

1. A letter from [REDACTED], Program Manager of Hispanic College Fund, Inc., dated August 9, 2004, congratulating the applicant for having won a scholarship;
2. A letter dated June 28, 2004, from [REDACTED] Chairman of Greater Washington, D.C. Hispanic Youth Symposium, informing the applicant that she has been accepted as a participant in the 2004 Greater Washington, D.C. Hispanic Youth Symposium;
3. A letter dated March 23, 2004, from [REDACTED], Director of Admissions of National Young Leaders Conference, informing the applicant that she has been nominated to represent the state of Maryland as a National Scholar at the National Young Leaders Conference;
4. Copies of the applicant's school record from High Point High School for the years 2004 to 2005;
5. Copies of pay stubs from RadioShack Corporation dated March 9, 2004, May 18, 2004, July 27, 2004, July 24, 2007, and, December 11, 2007;
6. Copies of bank statements from Chevy Chase Bank dated December 14, 2004, July 15, 2005, and October 17, 2005;
7. Copies of the applicant's Employment Authorization Cards;
8. A copy of a letter dated May 11, 2005, from [REDACTED], Dean, Enrollment Services from Prince George's Community College;
9. Copies of bank statements from Bank of America for the period from October 17, 2005 to December 20, 2005, and for the period from January 21, 2006 to February 16, 2006;
10. Copies of account statements from Macy's dated November 9, 2005, June 4, 2007, July 4, 2007, October 4, 2007, January 4, 2008, and, April 4, 2008;
11. Copies of pay stubs from Panda Restaurant Group, Inc., dated for the period from February 23, 2008 to May 17, 2008;
12. A copy of a billing statement from KAY Jewelers dated February 6, 2008;
13. Copies of Form(s) W-2, Wage and Tax Statement for the years 2004, 2005, 2006, and 2007; and,
14. Copies of Form(s) 1040, U.S. Individual Income Tax Return for the years 2004, 2005, 2006, and 2007.

The evidence submitted establishes that the applicant has not been continuously resident or continuously physically present in the United States during the requisite periods. Moreover, the applicant indicated on her Form I-821, Application for Temporary Protected Status, that she entered the United States in November of 2001, which is subsequent to the eligibility period. In addition, the record reflects that the applicant was apprehended by the U.S. Border Patrol as she attempted to enter the United States near the Calexico Port of Entry in Calexico, California, on November 25, 2001. Consequently, the applicant did not reside in the United States as of February 13, 2001, and was not physically present in the United States from March 9, 2001 to the filing date of this application. Therefore, she could not have satisfied the continuous residence and continuous physical presence requirements. The director's decision to deny the application for temporary protected status on these grounds 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.

ORDER: The appeal is dismissed.