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

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MD

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **OCT 31 2008**

[EAC 03 183 53199, *appeal*]

[EAC 02 077 53768]

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 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 claims to be 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 application because the applicant had not met the continuous residence and continuous physical presence requirements for TPS.

On appeal, the applicant resubmits a copy of a letter dated October 28, 2002, from the registrar of Washington-Lee High School in Arlington, Virginia, and a copy of her student transcript from that school for the 2002 and 2003 school years.

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.

A list of evidence submitted by the applicant to show that she satisfies continuous residence and continuous requirements is shown below:

1. A copy of a letter dated December 15, 2001 from the applicant's father [REDACTED] indicating that the applicant and his wife entered the United States by crossing the border at Brownsville, Texas, in January 2001.
2. A copy of a letter dated October 28, 2002, from the registrar of Washington-Lee High School in Arlington, Virginia, indicating that the applicant enrolled in the Arlington Public School System on October 15, 2001 at Thomas Jefferson Middle School.
3. A copy of the applicant's Jefferson Middle School report card from the Arlington Public Schools for the 2001 to 2002 school year.
4. A copy of the applicant's student transcript from Jefferson Middle School and Washington-Lee High School in Arlington, Virginia for the 2002 through 2004 school years showing her grades when she attended the eighth and ninth grade.
5. A letter dated February 19, 2005, from [REDACTED], Senior Pastor of the Iglesia Cristiana Nueva Vida Church in Falls Church, Virginia. Pastor [REDACTED] states that the applicant is a member of his Church and that she has been in its congregation since January 2000 until the present time.

6. An affidavit dated March 31, 2006 from the applicant's mother who states that in January 2000, she entered the United States with her husband and three children, including her daughter.

The letter from the applicant's father, [REDACTED], (Item # 1 above) in which he states that the applicant and his wife entered the United States by crossing the border at Brownsville, Texas, in July 2001, is contradicted by the information that he provided when he filed his initial Form I-821, Application for Temporary Protected Status, on April 16, 2001. In his Form I-821 he stated that the applicant, his wife, [REDACTED] and two of his other three children were residing in El Salvador on that date. Therefore the applicant could not have met the criteria for continuous residence since February 13, 2001 and continuous physical presence since March 9, 2001. Also, the letter from the Senior Pastor, (Item # 5 above), has little evidentiary weight or probative value as it does not provide the address where the applicant resided during the membership period. 8 C.F.R. § 244.9(a)(2)(v). None of the other evidence listed above placed the applicant in this country before the fall of 2002. After review of the record, it is determined that the applicant not has 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 two reasons.

Also, the applicant has provided insufficient evidence to establish that she is a national or citizen of El Salvador. She has provided a copy of her birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a) and § 244.9(a)(1).

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.