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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: JAN 09 2009

[REDACTED]  
[EAC 08 204 51883, appeal]  
[EAC 08 003 85625]

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.

/  
John F. Grissom, Acting 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 is sustained. The case will remanded to the Vermont Service Center.

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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number EAC 08 003 85625 after the initial registration period had closed. The director noted that because the applicant's spouse is in a TPS status, she qualifies for late initial registration. The director denied the applicant on June 18, 2008, after determining that the applicant had failed to establish that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001.

On appeal, the applicant states:

I misunderstood the request for additional evidence to apply to documents proving my physical presence until the date of filing of the asylum application. In fact, I now realize the request was for documents proving such presence until the date of the TPS filing. Given that I have renewed my work authorization card every year, I assumed erroneously that such evidence of my physical presence until 2008 was already in my file. A similar request for documents was not made of my husband, [REDACTED], who was included in my asylum application and whose TPS application (filed at the same time as mine) has already been granted.

I therefore attach as much proof of my physical presence as I have been able to gather and respectfully request that it be considered in light of my above explanation.

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

- (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.

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 has submitted the following documents to establish her continuous residence and continuous physical presence in the United States during the required periods:

1. Copies of money orders from Western Union in Hayward, California, showing the applicant sent funds to persons in El Salvador on August 3, 2001, December 4, 2001 and May 16, 2002.
2. Two copies of money orders from Banco Agricola Comercial De El Salvador in San Francisco showing the applicant sent funds to two persons in El Salvador on March 2, 2001.
3. Copies of the applicant's IRS Form 1040, U.S. Individual Income Tax Returns, for 2001 through 2007.
4. Copies of the applicant's electric bills for her apartment in Hayward, California for service from March 5, 2001 to April 4, 2001 and from July 3, 2002 to August 5, 2002.
5. Copies of money orders from Banco Agricola in San Francisco showing the applicant forwarded funds to persons in El Salvador on March 2, 2001, December 17, 2001, March 20, 2002, November 1, 2003, July 29, 2004, March 21, 2005, January 27, 2006 and September 28, 2007.
6. A copy of the applicant's bank statement from August 7, 2002 through September 6, 2002 from Cal Fed Banking in San Leandro, California.
7. A copy of the applicant's automobile insurance statements form AAA dated September 11, 2002, sent to her in Hayward, California.
8. A copy of the applicant's medical examination dated October 16, 2002.
9. A copy of the applicant's medical and surgical consent form from Alameda County Medical Center in Oakland, California, that she signed on July 2, 2003.
10. A copy of a letter to the applicant from World Financial Network National Bank dated September 2003 sent to her in Hayward, California.
11. A copy of the applicant's bill from Site For Sore Eyes in San Francisco, California, dated November 18, 2003.
12. A copy of the applicant's DISH Network statement dated June 14, 2006 addressed to her in Hayward, California.
13. A copy of the applicant's State of California identification card issued to her on October 10, 2006.
14. A copy of a letter to the applicant from Sears dated October 31, 2006, to her address in Hayward, California.

14. A copy of a letter to the applicant from Sears dated October 31, 2006, to her address in Hayward, California.
15. A copy of her El Salvadoran passport issued to her on June 28, 2007 in San Francisco, California.

The applicant has satisfied the continuous residence and continuous physical presence requirements for TPS. However, the record does not contain current fingerprints for the applicant. Therefore, the case will be remanded to the Vermont Service Center to schedule an appointment for fingerprinting.

An alien applying for temporary protected status has the burden of proving that he or she meets the above requirements and is eligible under the provisions of section 244 of the Act. The applicant has met this burden.

**ORDER:** The appeal is sustained. The case is remanded for further processing consistent with the above.