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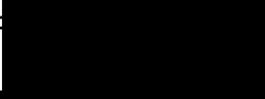
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

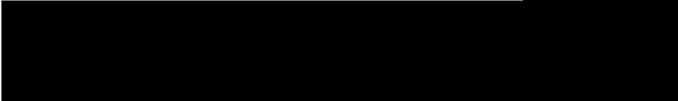


U.S. Citizenship
and Immigration
Services



MI

DATE: **NOV 03 2011** Office: VERMONT SERVICE CENTER FILE: 

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:

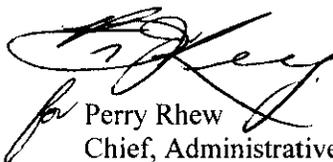


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
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 case will be remanded for further consideration and action.

The applicant claims to be a citizen of El Salvador, 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: 1) is a national of a foreign state designated by the Secretary, Department of Homeland Security (Secretary); and 2) had continuously resided in the United States since February 13, 2001.

On appeal, counsel asserts that the applicant is a citizen and national of El Salvador, she is not a native of Guatemala and she had not resettled in Guatemala. Counsel further asserts that the applicant has submitted sufficient evidence to establish her continuous physical presence in the United States.

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 Secretary 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

The term *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 term *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, 2012, 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 U.S. Citizenship and Immigration Services (USCIS). 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).

Pursuant to 8 C.F.R. § 244.2(a) an alien who 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, may, in the discretion of the director, be granted TPS. Section 101(a)(21) of the Act defines the term "national" to mean a person owing permanent allegiance to a state.

The regulation at 8 C.F.R. § 244.9(a)(1) provides, in part, that each application must be accompanied by evidence of the applicant's identity and nationality, if available. Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The first issue to be addressed is the applicant's nationality.

The record reflects that the applicant was born in Guatemala on May 23, 1983, to an El Salvadoran mother and a Guatemalan father. The applicant stated on the Form I-821, Application for Temporary Protected Status, that she was born in Guatemala and was a resident and national of El Salvador. The record includes a Form I-862, Notice to Appear, dated December 21, 2006, that indicates the applicant to be a native of Guatemala and a citizen of El Salvador. The applicant entered the United States without inspection on or about October 1, 1996.

The applicant presented her Guatemalan birth certificate, which was registered on September 1983. She also presented her El Salvadoran birth certificate, which listed her place of birth as Guatemala, and it was registered on March 25, 2009.

The director, in denying the TPS application, noted that the El Salvadoran birth certificate was registered almost 26 years after her birth and, therefore, the birth certificate alone could not be given much evidentiary value in establishing her nationality.

On appeal, the applicant submits copies of her El Salvadoran identification card and her El Salvadoran passport, which were issued on June 13, 2011, and June 14, 2011, respectively.

Articles 90 and 91 of the Constitution of El Salvador indicate that under Salvadoran law, an individual may acquire Salvadoran nationality at birth through a Salvadoran mother. The applicant's mother is stated to be a citizen of El Salvador, and under Salvadoran law, the applicant acquired Salvadoran nationality at birth through her Salvadoran mother.

Based on the applicant's birth certificate, and her El Salvadoran passport with accompanying photo identification, it is concluded that the applicant has submitted sufficient acceptable evidence to establish her nationality as an El Salvadoran. Therefore, this finding of the director will be withdrawn.

The second issue to be addressed is whether the applicant has established continuous residence in the United States since February 13, 2001.

The director, in his decision, noted that there was a significant portion of time that had not been accounted for in the evidence submitted by the applicant, namely the period from January 1, 2002 to December 31, 2004. The director also noted that the applicant had claimed on her Application for Cancellation of Removal, Form EOIR-42B, that she had been employed at Wells Fargo Bank from 2001 to June 2005; however, no supporting evidence was submitted.

On appeal, the applicant submits:

- Wage and Tax Statements for 2001, 2003 and 2004 from [REDACTED]
- Wage and Tax Statements for 2001 from Ross Stores, Inc., and for 2003 from [REDACTED]
- U.S. Individual Income Tax Returns and California Income Tax Returns for 2001, 2003 and 2004.
- A notice dated April 15, 2002, from the Internal Revenue Service regarding the 2001 tax period.
- An unsigned letter dated February 6, 2003, from [REDACTED] and cellular phone invoices addressed to the applicant from [REDACTED] for the services from November 9, 2002 through November 8, 2002 and from December 9, 2002 through January 8, 2003.
- Registration/fee receipts from [REDACTED] dated December 28, 2001 and July 7, 2003, respectively.
- Bank statements from [REDACTED] for June 5, 2004 through December 6, 2004.
- Unofficial transcripts from colleges in the United States that the applicant attended during the summer and fall semesters of 2002, the fall semester of 2003, the fall semester of 2005, the spring and summer semesters of 2006, and the fall semester of 2007.

The documents provided throughout the application process and on appeal are sufficient to establish the applicant's continuous residence in the United States and her continuous physical presence in the United States during the requisite periods. She has, thereby, established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for failure to establish continuous residence will be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording her the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

ORDER: The case is remanded to the director for further action consistent with the above and entry of a decision.