



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: APR 03 2007

[EAC 03 243 51790]

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.

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 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, counsel for the applicant submits 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 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 § 244.3;
- (e) Is not ineligible under § 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.

- (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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 23, 2003.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The applicant indicated on her Form I-821, Application for Temporary Protected Status, that she entered the United States without inspection in 2001. In support of the application, the applicant submitted:

1. a photocopy of the biographic page of the applicant's Salvadoran passport issued in New York, New York, on December 18, 2001;
2. a photocopy of a "Notice of Decision on Your Medical Assistance Application" from the Rockland County Department of Social Services, Pomona, New York, dated July 24, 2001; a

- “Notice of Intent to Discontinue For Failure to Comply With Recertification Procedures”; dated October 22, 2001; and, a photocopy of a Notice of Recertification for Medical Assistance dated September 21, 2001;
3. a photocopy of a discharge notice from Nyack Hospital, Nyack, New York, reflecting a discharge date of September 2, 2001;
 4. photocopies of Rockland County Health Department appointment cards relating to medical appointments on June 21, 2001 and July 12, 2001;
 5. a photocopy of a WIC Program Identification Card from the Rockland County Health Department issued on June 11, 2001;
 6. a photocopy of an appointment schedule reflecting medical appointments on July 9, 2001 and September 17, 2001;
 7. photocopies of mailing envelopes postmarked October 11, 2001 and October 12, 2001;
 8. a photocopy of a benefit identification card from the Rockland County Department of Social Services issued on September 22, 2001;
 9. a photocopy of a letter from the Rockland County Department of Health stating that the applicant was pregnant, and her “expected date of confinement” was September 6, 2001;
 10. a photocopy of a New York birth certificate indicating that a daughter, [REDACTED] was born to the applicant in Piermont, New York, on August 28, 2001; and,
 11. a photocopy of a letter dated August 9, 2001, from the Rockland County Department of Social Services informing the applicant that she had been enrolled in a Medicaid Managed Care health plan effective September 1, 2001.

On March 12, 2004, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, submitted the following:

12. photocopies of mailing envelopes postmarked on May 23, 2001 and September 11, 2001; and,
13. a photocopy of a letter dated August 9, 2001, from the Rockland County Department of Social Services informing the applicant that her unborn child had been enrolled into Healthsource and would be covered by that plan at birth.

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on May 26, 2004.

On appeal, counsel for the applicant submits the following:

14. an affidavit dated June 16, 2004, from [REDACTED] and [REDACTED] stating that the applicant had worked as a housekeeper "since the end of 2002"; and,
15. a letter dated June 12, 2004, from [REDACTED] stating that she met the applicant in February 2001 because she is friends with the applicant's aunt.

The applicant has submitted only an affidavit and a letter to establish her qualifying continuous residence and continuous physical presence in the United States prior to May 23, 2001, and from December 18, 2001 to August 23, 2003, the filing date of her TPS application. The employment affidavit from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, [REDACTED] do not provide the address where the applicant resided during the period of her employment. Without corroborative evidence, the letter from [REDACTED] is not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence.

It is noted that the applicant was apprehended by the United States Border Patrol on April 27, 2001, near Calavoz, Texas, after having entered the United States without inspection. The applicant told the Border Patrol officers that she was a native and citizen of Guatemala, and that she had departed her home in Guatemala on or about March 27, 2001, and entered the United States without inspection on April 27, 2001. The applicant was placed in removal proceedings and released on her own recognizance. On September 18, 2001, an Immigration Judge in Harlingen, Texas, ordered the applicant removed to Guatemala in absentia when she failed to appear for her removal hearing. On September 25, 2001, the District Director, Harlingen, Texas, issued a Form I-166 ordering the applicant to appear at the District Office, Harlingen, on October 25, 2001, for removal to Guatemala. The applicant failed to appear to be removed as ordered.

Since it appears that the applicant did not enter the United States until April 27, 2001, she cannot establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods. She has, therefore, failed to establish that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant's current claim to be a Salvadoran citizen contradicts her previous claim to be a Guatemalan citizen. Therefore, the applicant has not conclusively established her identity and nationality as described at 8 C.F.R. § 244.9(a)(1), and the application also must be denied for this reason.

Finally, it is noted that the record contains an outstanding Form I-205, Warrant of Removal/Deportation, issued by the District Director, Harlingen, on September 25, 2001.

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 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.