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APR 20 2004

FILE:

Office: VERMONT SERVICE CENTER

Date:

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, Director
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 determined that the applicant failed to submit evidence to establish her continuous residence in the United States since February 13, 2001, and her physical presence in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel for the applicant asserts that the applicant is eligible for temporary protected status. Counsel submits additional evidence of the applicant's residence 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 as 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 condition described in paragraph (f)(2) of this section.

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.

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 entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 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 record of proceeding confirms that the applicant filed her TPS application on August 13, 2001. In support of her claim, the applicant submitted a July 16, 2001 affidavit from a [REDACTED] who stated that he had known the applicant since March 2000. Mr. [REDACTED] stated that he sees the applicant on a daily basis, and that he is personally aware that she had been physically present and had continuously resided in the United States since February 18, 2000.

The applicant was requested on November 12, 2002, to submit evidence to establish her continuous residence in the United States since February 13, 2001, and evidence to establish her physical presence in the United States since March 9, 2001. On February 5, 2003, counsel requested an extension of time in which to respond to the request for additional evidence. A second request was received from counsel on April 8, 2003, requesting additional time to submit the evidence. The record does not reflect that an additional response was received.

The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods. On April 24, 2003, the director denied counsel's second request for

additional time to submit evidence and denied the application for TPS. On appeal, counsel reiterates the applicant's claim to eligibility for TPS and submits the following documentation:

- 1.) another copy of the July 16, 2001 affidavit from [REDACTED] who stated he had known the applicant since March 2000, that he sees her on a daily basis, and that he is personally aware that she had been physically present and she had continuously resided in the United States since February 18, 2000;
- 2.) a receipt dated June 3, 2002 for a \$300 security deposit issued to a [REDACTED] for the premises located at [REDACTED];
- 3.) a receipt dated July 29, 2002 for rental of the premises described as located at [REDACTED] - up";
- 4.) a receipt dated August 30, 2002 for rental of the premises located at [REDACTED];
- 5.) a February 20, 2003 affidavit from [REDACTED] who states the applicant lived with her at [REDACTED] and shared rent from July 2002;
- 6.) an April 30, 2003 affidavit from [REDACTED] who states she has known the applicant since February 2000;
- 7.) an April 30, 2003 affidavit from [REDACTED] who states he has known the applicant since March 2001;
- 8.) an April 30, 2003 affidavit from [REDACTED] who states he has known the applicant since August 2001;
- 9.) an April 30, 2003 affidavit from [REDACTED] who states she has known the applicant since August 2001;
- 10.) pay statements dated September 6, 2002, September 13, 2002, September 21, 2002, and October 5, 2002; and
- 11.) two IRS W-2 Wage and Tax Statement (s) for the year 2002.

There are several discrepancies in the documentation submitted by the applicant. The applicant submitted a February 20, 2003 affidavit from [REDACTED] who states the applicant lived with her at [REDACTED] and shared rent from July 2002. However, she furnished a June 3, 2002 receipt for a security deposit paid by a [REDACTED] for the premises located at [REDACTED]. In addition, the July 29, 2002 receipt, shown in item No. 3, above, indicates that it is in payment of rent at a different location than the address where Ms. [REDACTED] stated she and the applicant lived. The August 30, 2002 receipt neither shows the applicant's name nor indicates to whom it was issued.

The affidavits from [REDACTED] and [REDACTED] merely state that they have known the applicant from various dates; however, none provides any specific information to establish that they had direct knowledge that the applicant has been continuously present in the United States since February 13, 2001 and evidence to establish that she has been physically present in the United States since March 9, 2001. Furthermore, the first affidavit from [REDACTED] states that he has known the applicant since February 18, 2000, and that he sees her every day; but the second affidavit states that he has known her since August 2001. Moreover, the affidavits are not supported by any corroborative evidence. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or presence in the United States.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the evidence presented. Therefore, the reliability of the remaining evidence offered

by the applicant is suspect, and it must be concluded that the applicant has failed to establish that she has met the continuous residence and physical presence criteria for TPS.

The applicant claims to have continuously resided in the United States since February 18, 2000. However, she has not furnished any evidence for the period from February 13, 2001, to the date she filed the application for TPS. It is reasonable to expect that the applicant would have contemporaneous evidence to support her assertion; however, no credible evidence has been provided. The applicant has, therefore, failed to establish that she has met the residence and 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.

The burden of proof is upon the applicant to establish 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.