



U.S. Citizenship
and Immigration
Services

M

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUN 16 2004

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 office that originally decided your case. Any further inquiry must be made to that office.

Cindy N. Gomez
Robert P. Wiemann, Director *for*
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 denied the application because the applicant failed to establish she had continuously resided in the United States since February 13, 2001.

On appeal, the applicant submits a statement.

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 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 Attorney General may designate;
- (d) is admissible as an immigrant 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, or
 - (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. 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 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).

On September 4, 2002, the applicant was requested to submit evidence establishing her residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. a letter from [REDACTED] of the UNITE (Union of Needletrades, Industrial and Textile Employees) Immigration Project, stating that the beneficiary entered the United States "when she was 17 years old" and that she has "been helping her relatives with household duties in exchange for room and board" since her entry into the United States;
2. an affidavit from [REDACTED] attesting that the applicant is his niece and that he has personal knowledge that the applicant has resided at [REDACTED] New York, New York, since October 2000;
3. an affidavit from [REDACTED] stating that the applicant is his niece and that he has personal knowledge that she has resided at [REDACTED] New York, New York, since October 2000; and,
4. an affidavit from Higio Leiva stating that the applicant is his niece and that he has personal knowledge that she lives at [REDACTED] New York, New York, no dates of residence specified.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on December 10, 2002. On appeal, the applicant reasserted her claim and submitted a statement in which she indicates that she first entered the United States in January 2001 and has resided continuously in the New York City area since that date. The applicant claims that she traveled from California to Morelia, Mexico, on or about August 20, 2001, in order to buy medicine in Mexico. She states that she was detained by officers of the Immigration and Naturalization Service (now Customs and Border Protection) on five different occasions, until she was finally able to reenter the United States without inspection on October 4, 2001. The applicant asserts that she has maintained continuous residence in the United States except for her 45-day sojourn in Mexico.

The letter provided by [REDACTED] is not sufficient to establish that the applicant has maintained continuous residence and continuous physical residence in the United States during the requisite time periods. Pursuant to 8 C.F.R. § 244.9(v), an attestation of residence provided by a representative of a union must be signed by an official of the union whose title is shown, and must state the addresses where the applicant has resided during the membership period, how the attester knows the applicant, and the origin of the information being attested to. Mr. [REDACTED] did not provide his title, nor did he indicate that the applicant has ever been a member of the union. Further, [REDACTED] did not provide the applicant's addresses during the requisite period, or provide any information as to how he knows the applicant or the source of the information supplied in his letter.

The affidavits provided by the applicant are not sufficient to establish her claim to have maintained continuous residence in the United States since February 13, 2001, and continuous physical presence in the

United States since March 9, 2001. The information provided by the affiants directly contradicts information provided by the applicant on appeal. Two of the affiants, [REDACTED] state that the applicant has lived in the United States since October 2000; and one affiant, [REDACTED] does not provide any information as to the applicant's dates of residence in the United States. These statements contradict the applicant's statement on appeal that she first entered the United States in January 2001, and that she has resided in the New York City area since that date. The applicant has failed to submit any objective evidence to explain or justify these contradictions. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(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 also has failed to submit sufficient evidence of her continuous physical presence in the United States since March 9, 2001. Therefore, the application must also be denied for this reason.

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.