



U.S. Citizenship
and Immigration
Services

M

[REDACTED]

FILE:

[REDACTED]

Office: Vermont Service Center

Date:

OCT 01 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:

Self-represented

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

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 reiterates her claim of eligibility for TPS and submits a brief statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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.

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 entry on or prior to February 13, 2001, 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).

Along with her application for TPS, the applicant provided the following documentation:

1. A copy of her Salvadoran birth certificate along with an English translation.
2. An affidavit dated June 19, 2002, from an acquaintance Ms. Juana A. Zelaya, who stated that the applicant had been physically present in the United States since January 2001.

3. A letter dated June 11, 2002, from [REDACTED] of the Ugente Express, Inc., in Bay Shore, New York, who stated that the applicant had been doing business with her since January 2000.
4. Copies of her pay-stubs dated October 25, 2001, from LNK International in Hauppauge, New York, reflecting a pay period from October 15, 2001 to October 21, 2001.
5. A copy of a pay-stub dated September 28, 2001, from Olga Cosmetics, in Hauppauge, New York.

On February 25, 2003, 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:

6. An affidavit dated March 8, 2003, [REDACTED] who stated that he had known the applicant since November 2000, and that the applicant had been physically present in the United States since November 2000.
7. An affidavit dated March 8, 2003, from [REDACTED] who stated that he had known the applicant since November 2000, and that the applicant had been physically present in the United States since November 2000.
8. An affidavit dated March 7, 2003, from [REDACTED] who stated that he had known the applicant since December 2000.
9. An affidavit dated March 7, 2003, from [REDACTED] who stated that he had known the applicant since November 2000, and that the applicant had been living in the United States continuously since November 2000.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on April 10, 2003.

On appeal, the applicant indicates that she erroneously stated that she came to the United States in January 2001. The applicant now claims she entered the United States around the end of November 2000. Further, she states that the affiant to No. 2 above did not notice the mistake in her affidavit, and that she knew the applicant since January 2001. The applicant states in a letter submitted with her appeal that she did enter the United States near the end of November 2000. No additional documentation was submitted along with her appeal.

The statements from the affiants detailed in Nos. 2, 6, 7, 8, and 9 above regarding the applicant's claimed presence in the United States before February 13, 2001, are not supported by corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions of the applicant's residence and presence during the requisite time period. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or presence.

A review of the record shows that the applicant, on four separate occasions, had stated that she did not enter the United States until January 2001, as indicated on her applications for TPS and employment authorization. The applicant, on appeal, now claims that she entered the United States near the end of November 2000. However, the applicant failed to provide any credible evidence to substantiate her new claim.

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 her claimed entry into the United States.

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 her qualifying residence in the United States since February 13, 2001, or her physical presence in the United States since March 9, 2001. She has, therefore, failed to establish 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 temporary protected status will be affirmed.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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.