

Identifying information should be  
prevent clear and warranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

PUBLICATION

MI

FILE: [REDACTED] Office: Vermont Service Center

Date: SEP 18 2008

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:

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, Director  
Administrative Appeals Office

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 submitted the following documentation:

1. A copy of her Salvadoran birth certificate along with an English translation.
2. An affidavit dated June 20, 2002, from [REDACTED] who stated that the applicant had been a tenant of his since December 2000.
3. An affidavit dated June 19, 2002, from [REDACTED] who stated that the applicant had been living in the United States since December 10, 2000.

On February 19, 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:

4. An affidavit dated March 1, 2003, from [REDACTED] who stated that the applicant had been a tenant in his home since December 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 16, 2003.

On appeal, counsel on behalf of the applicant reasserted the applicant's claim and submitted the following documentation:

5. A copy of a check-stub dated March 25, 2003, from the New York State Department of Taxation and Finance.
6. A copy of a cash receipt from [REDACTED] dated September 7, 2002, for her TPS application.
7. A copy of a cash receipt dated August 28, 2002, from the Suffolk County Department of Health Services.
8. A copy of an Express Mail receipt reflecting a postmark date of July 18, 2002, from the United States Postal Service in Hicksville, New York.
9. Copies of her pay-stubs from McDonald's, Corporation, covering pay periods from September 15, 2002 through April 12, 2003.
10. A copy of a message dated September 3, 2002, from the Family Planning Dolan Family Health Center in Greenlawn, New York.
11. A copy of an invoice dated September 26, 2002, from the Revenue Unit of the Suffolk County Department of Health in Hauppauge, New York.
12. A copies of the applicant's bank account statements dated September 30, 2002 and March 31, 2003, from the North Folk Bank in Huntington Station, New York..
13. Copies of Western Union money transfer receipts dated March 2, 2003 and April 10, 2003.
14. A copy of her letter from Western Union Messaging Services dated February 15, 2003.

[REDACTED] the affiant to the document in No. 2 above, stated that the applicant had been his tenant [REDACTED] since December 2000; however, [REDACTED] the affiant to the document in No. 4, stated that the applicant was a tenant in his home at [REDACTED] during the same period. Further, the director had noted this inconsistency in the denial of the application.

On appeal, counsel for the applicant stated that the affidavit from [REDACTED] was "fictitious in nature", and that the applicant had never intended to mislead the Service. Counsel further indicated that the applicant "out of desperation" solicited the letter from [REDACTED] and that the applicant never resided with him.

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). Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The statements provided by the affiants in Nos. 2, 3, and 4, regarding the applicant's claimed presence in the United States 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; however, no corroborative evidence has been provided to cover the requisite time periods for Salvadoran TPS. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence. Further, the evidence provided by counsel on appeal does not cover the requisite time period of residence or physical presence in the United States for TPS.

The applicant has not submitted sufficient credible evidence 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.

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.