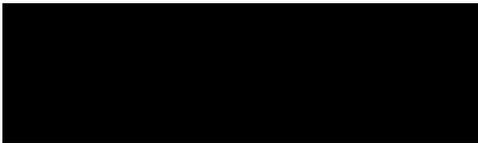




U.S. Citizenship
and Immigration
Services

M



FILE: [Redacted] Office: Vermont Service Center

Date: Sep 18 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

COPY COPY

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

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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: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001, to the date of filing her application.

On appeal, the applicant asserted her claim of eligibility for TPS and submitted evidence in support of her claim.

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 submitted the following documentation:

1. Copies of her Salvadoran birth certificate along with an English translation.
2. An affidavit dated June 9, 2002, from [REDACTED] who stated that the applicant had lived in his home since December 2000.

3. An affidavit dated June 9, 2002, from [REDACTED] who stated that he had known the applicant since December 2000.

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

4. Copies of handwritten pay-stubs dated April 27, 2001 and October 4, 2001.
5. A copy of a handwritten paid receipt record dated February 20, 2001.
6. An undated letter from [REDACTED] who stated that the applicant had lived with him since February 20, 2001 at [REDACTED]
7. A copy of a statement of account dated September 1, 2002, from Unity Health Care, Inc.

The director determined that the evidence was insufficient to establish the applicant's eligibility for TPS and denied the application on April 22, 2003. On appeal, the applicant reasserted her claim and submitted the following documentation:

8. An affidavit dated May 12, 2003, from [REDACTED] who testified that he had shared residences with the applicant from December 20, 2000 to the present.

[REDACTED] stated in his affidavit, as detailed in No. 6 above, that the applicant had lived with him since February 20, 2001 for about nine months [REDACTED] in Hyattsville, Maryland. It is worth noting that [REDACTED] stated in his affidavit, as detailed in No. 8 above, that the applicant had lived with him from December 20, 2000 to June 1, 2001 at [REDACTED]. In addition, Mr. [REDACTED] stated that the applicant also had lived with him from June 1, 2001 to April 17, 2001 [REDACTED]. It appears that the applicant had lived at three separate residences within the same time period since February 20, 2001 to about November 2001.

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, on appeal, stated that there were inconsistencies with the dates in the submitted evidence, mainly due to tenant and landlord problems at that time. However, the applicant's statements do not explain the extent of the discrepancies described above. Furthermore, the applicant has failed to submit any objective evidence to explain or justify the discrepancies. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

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, to the date of filing her application. 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.