



U.S. Citizenship
and Immigration
Services

M

[Redacted]

FILE: [Redacted]

Office: TEXAS SERVICE CENTER

Date: SEP 17 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.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application was denied by the Director, Texas 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 and additional evidence.

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.

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 May 29, 2003, the applicant was requested to submit evidence establishing her residence since February 13, 2001. The applicant was also requested to submit a photo identity document and evidence of her nationality. The applicant, in response, provided the following documentation:

1. A photocopy of her Texas Identification Card, with an expiration date of January 23, 2008;
2. A photocopy of the biographic page of her El Salvador passport, issued by the Consulate General, Houston, Texas, on March 1, 2002;
3. A photocopy of a handwritten birth certificate; and
4. Western Union receipts dated April 27, 2001; June 27, 2001; July 10, 2001; and July 27, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on June 19, 2003.

On appeal, the applicant asserts that when she entered the United States in December 2000, she did not have identification or work authorization to obtain employment, lease an apartment or obtain utilities under her own name. She states she lived with a female friend, [REDACTED] who provided for her needs in exchange for housework. In support of her appeal, the applicant also submits the following documentation:

1. An affidavit dated July 15, 2003, from the applicant's uncle, attesting that she came to Houston, Texas, in December 2000, and that she visits him often; and,
2. A photocopy of an apartment lease dated February 1, 2001, signed by [REDACTED] in which the applicant's name appears as an occupant who has not signed the lease.

It is noted that the affidavit from the applicant's uncle contains an alteration in the statement declaring the applicant's date of entry. The portion of the affidavit specifying the year "2000." has been added in different typeface over correction fluid or tape. This affidavit gives the uncle's address as [REDACTED] Houston, Texas, which is the same address the applicant has provided as her own residence since the year 2002; however, the affidavit does not assert the applicant lives there, but rather that she "visits ... often." It is further noted that the pay stubs submitted with the initial application also bear evidence of alteration. These pay stubs are dated in August, September, and October 2000, dates that precede the applicant's alleged date of entry. The pay stubs bear no address or name of the company that issued them. Furthermore, the pay stubs indicate a social security number followed by the name [REDACTED] above which the applicant's name has been entered in different typeface. In addition, the apartment lease indicating that the applicant resided with [REDACTED] since February 2001, is inconsistent with the applicant's statement made on appeal that she resided with [REDACTED] who provided her "shelter, food, transportation, and everything that [she] needed to survive."

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 failed to submit any objective evidence to explain or justify the apparent alteration of the pay stubs and the affidavit from her uncle, as well as the inconsistency between her statement and the apartment lease, both submitted on appeal. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to satisfy the continuous residence requirement described in 8 C.F.R. §§ 244.2(c). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed, and the application must be denied.

Beyond the decision of the director, the applicant has not submitted sufficient credible evidence to establish her qualifying continuous physical presence in the United States since March 9, 2001, in accordance with the criteria described in 8 C.F.R. § 244.2(b). 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.