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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M1

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: AUG 01 2005
[EAC 03 001 51994]

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits a letter and additional documentation.

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 parole; 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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The applicant properly filed her initial Form I-821, Application for Temporary Protected Status, on September 9, 2002. In support of her initial application, the applicant submitted the following documentation:

1. A photocopy of her El Salvadoran birth certificate, with English translation;
2. A letter from Pastor [REDACTED] dated September 1, 2002, stating that he has known the applicant since February 2001;
3. An affidavit from [REDACTED] dated September 4, 2002, stating that she has known the applicant since February 2, 2001; and,
4. An undated letter from [REDACTED] stating that she has known the applicant since February 2001, and that the applicant took care of her children since April 2002.

On May 22, 2003, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director specifically advised the applicant that acceptable evidence might include, but is not limited to, employment or school records, rent or medical receipts, bank or insurance documents, medical or utility bills, or other similar documentation. In response, the applicant submitted:

5. An affidavit stating that she entered the United States without inspection on January 30, 2001, has resided with her husband since that date, and first became employed in April 2002;
6. A similar affidavit from her spouse, [REDACTED] and,
7. A photocopy of her marriage certificate, with English translation, showing that she was married to [REDACTED] in El Salvador on January 23, 1998.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on July 28, 2003.

On appeal, the applicant submits the following additional documentation:

8. A letter, dated August 14, 2003, from [REDACTED] President of European Market, Inc, Rockville, Maryland, stating that the applicant was employed by him from February 8, 2001 to January 2002;
9. Two hand-written, un-translated receipts issued to the applicant by [REDACTED] on February 10, 2001, and April 14, 2001; and,
10. A photocopy of an Arlington, Virginia, Business License Tax Return, signed by [REDACTED] on January 15, 2003.

The applicant claims to have lived in the United States since February 2, 2001. It is reasonable to assume that she would have a variety of contemporaneous evidence to support this claim. The affidavits from the applicant herself, her spouse, and an acquaintance (Nos. 3, 5, and 6, above) are not, by themselves, persuasive evidence of residence or physical presence. The affidavit from [REDACTED] (No. 2) has little evidentiary weight or

probative value as it does not provide the specific date that the applicant was registered as a parishioner at his church. Similarly, the employment letters (Nos. 4 and 8) have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, No. 4 is not dated, neither is in the form of an affidavit, and the letters do not provide the address where the applicant resided during the period of her employment, the exact period(s) of employment, and the period(s) of layoff (if any). No. 10 is not persuasive as the receipts are hand-written and un-translated. It is unclear as to the relevance of No. 11.

Furthermore, there are discrepancies noted in the information provided. The applicant and her spouse attest (in Nos. 5 and 6) that the applicant was unemployed from February 2001 to April 2002; however, the information contained in No. 8 indicates that the European Market, Inc. employed the applicant from February 2001 to January 2002. These discrepancies have not been explained and call into question in the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

It is concluded that the applicant has not submitted sufficient credible, corroborative evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. 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.