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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

FILE: [REDACTED]
[EAC 02 244 50299]

Office: VERMONT SERVICE CENTER

Date: AUG 01 2005

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 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.

On appeal, the applicant asserts that she has resided in the United States since January of 2001 and, therefore, qualifies for TPS.

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 TPS 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 except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 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.

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. An extension of the TPS designation has been granted with validity 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 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).

The applicant initially submitted with her TPS application the following documentation:

1. A copy of the applicant's El Salvadoran passport which was issued to her in El Salvador on April 1, 2002;
2. A copy of the applicant's El Salvadoran birth certificate with English translations;
3. An affidavit of support from [REDACTED] which he states that he has known the applicant since January of 2001 and that she has been living at [REDACTED] and [REDACTED];
4. A copy of a pay stub issued by Republic Foods with a pay date of April 19, 2001, and bearing the applicant's name as employee.

On November 21, 2002, the applicant was requested to submit evidence establishing her continuous residence since February 13, 2001. The applicant failed to respond to the Notice of Intent to Deny.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on November 4, 2003.

On appeal, the applicant reasserts her claim of eligibility for TPS and submits the following documentation:

5. Copies of rent receipts dated January of 2001 through December of 2003 and bearing the applicant's name.

The applicant has not submitted any evidence to establish her qualifying continuous residence in the United States during the period from February 13, 2001, to July 12, 2002. It is noted by the AAO that the applicant submitted a copy of her El Salvadoran passport which was issued to her in El Salvador on April 1, 2002, thus contradicting her contention that she has continuously resided in the United States from February 13, 2001, to July 12, 2002. It is also noted that a single pay stub or single affidavit is insufficient to establish continuous residence during the requisite period. It is further noted that the copies of the rent receipts are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as money order receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States.

There is no address affixed to the applicant's rent receipts, nor are the receipt numbers in sequence with the chronological dates. 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 inconsistencies. Therefore, the reliability of the other evidence offered by the applicant is also suspect. The applicant claims to have lived in the United States since January of 2001. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

The applicant has failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, there has been insufficient evidence submitted by the applicant to establish her continuous physical presence in the United States from March 9, 2001, to July 12, 2002. A single affidavit or single pay stub are insufficient to establish continuous physical presence. Likewise, the rent receipts submitted by the applicant do not contain any address, and the inconsistency found in the receipt numbers and dates has not been explained. Further, the record shows that the applicant was present in El Salvador on April 1, 2002. For these additional reasons, the application must be denied.

An alien applying for TPS 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.