

U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 02 286 51442]

OFFICE: VERMONT SERVICE CENTER

DATE: **AUG 19 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. Wemmann, 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: 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.

On appeal, the applicant asserts that based upon regulatory requirements, she has submitted sufficient evidence to establish her continuous residence and continuous physical presence in the United States since February 13, 2001. The applicant further asserts that TPS is a humanitarian law and as such, all evidence should be scrutinized in that light.

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 relevance, 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 the following documentation along with her TPS application:

1. An affidavit dated August 20, 2002 from [REDACTED] in which he stated that he has known the applicant through family members for two years; and,
2. An affidavit from [REDACTED] in which she stated that she has known the applicant since January of 2000.

On May 15, 2003 and July 11, 2003, the applicant was requested to submit evidence establishing her continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

3. An affidavit dated June 11, 2003 from [REDACTED] in which he stated that he has known the applicant for about three years, that the applicant has resided in the United States since before February 13, 2001, and that the applicant resides at 22 Trull Street, Somerville, Massachusetts;

4. A letter from Doctor [REDACTED] of Union Square Family Health in which she stated that the applicant is one of her continuity patients at the health center and receives ongoing care there; and,
5. A copy of a birth certificate listing the applicant as the mother of [REDACTED] who was born July 5, 2002 in Cambridge, Massachusetts.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on September 23, 2003.

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

6. A letter from the pastor of Saint Benedict's Rectory in which he states that the applicant came to the United States August 22, 2000, and that she attends mass at the Parish;
7. Copies of two rent receipts dated December of 2000 and March of 2001 for the premises known as [REDACTED], Massachusetts and bearing the applicant's name as renter;
8. A letter from Doctor [REDACTED] of Union Square Family Health in which he states that the applicant's first visit to the health center was November 19, 2001, and that she has subsequently been a patient there;
9. An affidavit from [REDACTED] in which she states that she has known the applicant since July of 2001;
10. An affidavit from [REDACTED] in which he states that he has known the applicant since March of 2001 as a friend; and,
11. And a letter dated June 10, 2003 [REDACTED] in which he states that he has known the applicant for two years through family members.

The applicant has failed to submit sufficient evidence to establish her qualifying continuous residence in United States since February 13, 2001, and continuous physical presence in the United States since March 2001. The applicant submitted two affidavits and a letter (Nos. 1, 10, and 11 above) in which [REDACTED] first states that he has known the applicant since August of 2000; he then states that he has known the applicant since March of 2001; and finally he states that he has known the applicant since June of 2001. Doubt cast on any aspect of 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 submitting independent objective evidence; and attempts to explain or reconcile such inconsistencies, absent compelling objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1999). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies.

The affidavit from the parish pastor (No. 6 above) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of her involvement with the church.

The statements from [REDACTED] and [REDACTED] regarding applicant's claimed presence in the United States since 2000 are not supported by any corroborative evidence.

The applicant claims to have been in the United States since January of 2000. It is reasonable to expect that she would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence and continuous physical presence in the United States during the requisite period. Further, if the knowledge of the applicant's entry into the United States is based primarily on what the applicant told them about her entry into the United States, then their statements are essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's residence in the United States.

The letters from Union Square Family Health (Nos. 4 and 8 above) do not refer to the applicant's presence in the United States on or before February 13, 2001. The two rent receipts (No. 7 above) showing that the applicant has paid rent in the United States for two months are insufficient to establish her continuous residence and continuous physical presence in the United States from February 13, 2001 through September 6, 2002. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents "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. All other evidence submitted is dated beyond the requisite time period. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous residence and continuous physical presence requirements 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 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.