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U.S. Citizenship
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FILE: [REDACTED]
[EAC 03 063 51314]

Office: VERMONT SERVICE CENTER

Date: AUG 25 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:



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: 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, counsel asserts the applicant's claim of eligibility 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 the following evidence along with her TPS application:

1. An affidavit from [REDACTED] in which she stated that the applicant started working in her house [REDACTED] as a babysitter on January 26, 2001.

On August 14, 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 responded by submitting the following documentation:

2. An affidavit from [REDACTED] in which she stated that the applicant entered the United States on January 10, 2001, began working for her as a babysitter on January 26, 2001, and lives in her house at [REDACTED]

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on March 22, 2004. The director noted that the applicant's husband stated in his TPS application dated May 25, 2001 that she resided in El Salvador, not the United States.

On appeal, counsel asserts that the applicant's husband made a mistake on his TPS application when he stated that the applicant resided in El Salvador. Counsel further asserts that the applicant has resided in the United States with her husband since January of 2001. The applicant submits the following documentation on appeal:

3. An affidavit from [REDACTED] in which he states that he is the husband of the applicant, that he mistakenly stated in his TPS application dated May 25, 2001 that the applicant resided in El Salvador, and that the applicant has resided with him in the United States since January 10, 2001;
4. An affidavit from [REDACTED] Iglesia De Dios Farmingdale Church of God dated [REDACTED] [REDACTED] which she states that the church has known the applicant since January of 2001 and that she has been a member of the church for the past three years;
5. An affidavit from [REDACTED] dated April 19, 2004 in which she states that the applicant has resided at her house with her husband at [REDACTED] January 10, 2001; that the applicant is her babysitter; and that the applicant has not traveled outside of the United States since; and,
6. An affidavit from [REDACTED] in which she states that she has known the applicant since childhood and that the applicant has resided in the United States [REDACTED] [REDACTED] since January 10, 2001.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. There has been no corroborative evidence submitted to support the statements made by the affiants regarding the applicant's claimed presence in the United States beginning in January of 2001. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient 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). Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. Further, the affiants have not demonstrated that their knowledge of the applicant's entry into the United States is independent of their personal relationship with the applicant. If this knowledge 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 continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v).

There has been insufficient evidence submitted to explain the inconsistencies in regard to the applicant's residence in May of 2001. In addition, the applicant's husband listed in his applications for Temporary Protective Status and Employment Authorization dated May 25, 2001; [REDACTED] as his place of residence, [REDACTED]. The applicant has, therefore, failed to establish that she has met 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.

Beyond the decision of the director, the applicant has not submitted a copy of an official Salvadoran photo identification document to establish her identity and nationality. Therefore, the application must also be denied for this reason.

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.