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FILE: [REDACTED]
[EAC 02 239 50116]

Office: Vermont Service Center

Date: MAY 05 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 her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS.

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 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 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).

On July 22, 2003, the applicant was requested to submit evidence establishing her continuous residence in the United States as of February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. On August 25, 2003, the applicant responded to the director's

request and submitted the following documentation: an employment affidavit dated August 19, 2003, from Ms. [REDACTED] owner of [REDACTED] Cleaning located in Alexandria, Virginia, who stated the applicant had been employed by her since January 1, 2001; a copy of a hand-written receipt dated January 16, 2001, from Dr. [REDACTED] for her dental fees; and a copy of the biographical pages of her passport issued in El Salvador on November 9, 2001. On September 3, 2003, the director denied her application for TPS because he determined the record did not contain a response to the director's July 22, 2003 request and, therefore, the grounds for denial had not been overcome.

On October 1, 2003, counsel, on behalf of the applicant, filed an appeal to the director's September 3, 2003 decision to deny the application. Along with the appeal, counsel provided the following documentation: a copy of the applicant's medical examination report dated May 24, 2003, from the Seven Corners Family Practice in Falls Church, Virginia; a copy of the employment affidavit from Ms. [REDACTED] an affidavit dated September 11, 2003, from Mr. [REDACTED] who stated that the applicant came to the United States in January 2001; a copy of a lease agreement between the applicant and the [REDACTED] Company reflecting a lease period between May 1, 2003 and November 30, 2003; and a copy of her Employment Authorization card. Counsel also stated that the applicant did not receive a copy of any notice from the Service requesting evidence. However, as stated previously, on August 25, 2003, the applicant responded to the director's July 22, 2003 request.

The director reviewed the evidence submitted by counsel on appeal of the September 3, 2003 denial. The director, however, determined that the applicant had failed to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing her application. The director, therefore, again denied the application on October 15, 2003. The applicant was granted 30 days to submit a brief and additional evidence.

On November 14, 2003, counsel filed an appeal to the director's October 15, 2003 notice denying her application. Counsel states that this is the second time the applicant had appealed her case. The applicant's second appeal is now before the AAO.

Counsel, on behalf of the applicant, also states that he is providing additional evidence to establish the applicant's presence in the United States during 2001; however, counsel did not submit any additional evidence along with this appeal.

A review of the record reflects that the applicant had submitted two affidavits along with her filing of her TPS application: an affidavit dated June 28, 2002, from Mr. [REDACTED] who stated that the applicant had resided at [REDACTED] in Alexandria, Virginia since January 2001, and she had been paying monthly rent for a room at that address; and an affidavit dated June 28, 2002, from [REDACTED] who stated that he has known the applicant since January 2001. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence.

The statement provided by [REDACTED] not supported by corroborative evidence such as rental receipts. Although [REDACTED] stated in his affidavit that he has known the applicant since January 2001, he did not indicate whether his acquaintance with the applicant was in the United States. The statement from Mr. [REDACTED] is also not supported by corroborative evidence. It is reasonable to expect that the applicant would

have some type of contemporaneous evidence to support these assertions; however, no corroborative evidence has been provided to cover the requisite time periods for Salvadoran TPS. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence. In addition, the employment affidavit from Ms. [REDACTED] 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)(i). Specifically, the Ms. [REDACTED] not provide the address where the applicant resided during the period of her employment. Ms. [REDACTED] stated that the applicant had been employed by her company since January 1, 2001. However, the applicant claimed on her application for TPS that she did not enter into the United States until January 15, 2001, fourteen days later. 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 discrepancies. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

It is also noted that the applicant's passport was issued to her on November 9, 2001, in El Salvador. Therefore, the applicant could not have met the requirements that she had continuously resided in the United States since February 13, 2001, and she had been continuously physically present in the United States from March 9, 2001. The applicant has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS 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.