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

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: NOV 21 2005
[EAC 01 248 53596]

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:

[redacted]

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.

for 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 her continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel for the applicant submits a statement and additional evidence.

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 designated by the Attorney General is eligible for temporary protected status 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 section 244.3;

(e) Is not ineligible under 8 C.F.R. § 244.4; and

(f) (1) Registers for TPS 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.

(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 with validity of the latest extension until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 13, 2001.

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 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).

With her initial application, the applicant submitted photocopies of: her El Salvadoran birth certificate; her El Salvadoran cedula dated November 17, 1999; an original notarized letter dated August 6, 2001, from [redacted]

of Ft. Washington, Maryland, stating that the applicant lived with her and worked as a babysitter since December 10, 2000; the El Salvadoran and United States passports in the name and an original letter dated August 3, 2001, from Reverend Parochial Assistant for Hispanics, Saint Dominic's Priory, Washington, D.C., stating that the applicant had assisted at Sunday Mass as a member of their Hispanic Community since December of 2000.

On February 25, 2004, the applicant was requested to submit evidence establishing her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

In response, through counsel, the applicant submitted photocopies of the following documentation:

1. Another copy of the letter dated August 3, 2001, from Reverend of Washington, D.C.;
2. Another copy of the letter dated August 6, 2001, from Ft. Washington, Maryland;
3. A letter dated March 2, 2004, from the Human Resources Department, Metuchen, New Jersey, stating that the applicant has been employed since September 9, 2002;
4. Earnings statements from Metuchen, New Jersey, dated in 2002 and 2003;
5. Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Return, for 2002 and 2003;
6. IRS Forms W-2, Wage and Earnings Statements, for 2002 and 2003;
7. Independence Community Bank, Brooklyn, New York, Combined Tax Statement for Year 2003, and account statement dated January 27, 2004;
8. A Fleet Bank letter dated October 30, 2002;
9. Horizon Blue Cross Blue Shield statement dated August 16, 2002, for services rendered in July 2002;
10. A letter dated October 16, 2001, from the Social Security Administration;
11. Copies of envelopes addressed to the applicant and postmarked November 15, 2001 and November 1, 2002;
12. A City of Elizabeth Marriage Certificate indicating the applicant's marriage to in Elizabeth, New Jersey, on May 5, 2002; and,
13. A letter from the State of New Jersey Division of Motor Vehicles dated June 4, 2003, indicating that the applicant's driving privileges had been restored.

The director determined that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and, therefore, denied the application on August 3, 2004. The director noted that the resubmitted letters from acquaintances covering the initial portion of the requisite periods were insufficient to establish her continuous residence and continuous physical presence, as they were not supported by documentary evidence. The director noted that the remainder of the documentary evidence was dated as of October 16, 2001, and later.

On appeal, counsel asserts that the applicant is not relying on only affidavits to demonstrate her continuous physical presence, but that she has also submitted documentary evidence apart from her own statements. Counsel asserts that the applicant has met her burden of proof for the period of February 2001 through June 27, 2001 with "affidavits from United States citizens including her previous employer." Counsel notes that the applicant's State-issued Identification Card was issued in June 2001, "barely five months after February 2001," and contends that this identification card along with the affidavits are sufficient to establish continuous residence and continuous physical presence during the initial portion of the requisite periods. In support of the appeal, counsel submits additional documentation consisting of: a State of North Carolina Identification Card issued on June 27, 2001; a notarized statement dated March 29, 2004, from stating that the applicant lived with

her in Ft. Washington, Maryland since December 2000; a notarized statement also dated March 29, 2004, from of Clinton, Maryland, stating that she became acquainted with the applicant after the applicant moved into her parents' home in December 2000; and, copies of the biographic pages of the United States passports for the two women who issued statements.

Counsel refers to the letter of letter dated August 6, 2001, from of Ft. Washington, Maryland, listed above at Number 2, as an "employer letter." Ms. Fuentes' letter indicates that the applicant lived with her and worked as a babysitter since December 10, 2000. This letter, however, does not conform to the regulatory requirements for a letter verifying employment as designated under 8 C.F.R. § 244.9(a)(2)(i)(A) through (D). The letter from the reverend listed above at Number 1, also does not include specific information as required under the provisions of 8 C.F.R. § 244.9(a)(2)(v)(A) through (G). Although counsel refers to the March 29, 2004 letters and submitted on appeal, as "affidavits," these letters are notarized but are not in affidavit form and do not attest to the facts under penalty of perjury. Counsel asserts that these letters in conjunction with the State of North Carolina Identification Card issued on June 2001, are sufficient to establish the applicant's continuous residence and continuous physical presence in the United States. The North Carolina Identification Card, however, provides an address for the applicant in North Carolina during the same timeframe in which the letters indicate that the applicant was living and working as a babysitter in Ft. Washington, Maryland. 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). These inconsistencies have not been explained. The record does not contain other sufficient corroborative evidence prior to October 2001, for the initial months of the requisite timeframes. Therefore, the applicant has not established 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 temporary protected status on these grounds will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.