



U.S. Citizenship
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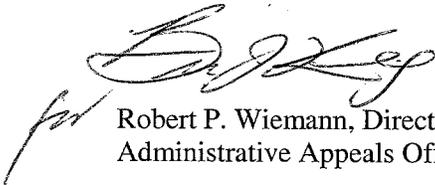
IN RE: Applicant: [REDACTED]

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.


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 on appeal. The appeal will be dismissed.

The applicant claims to be 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 had failed to submit sufficient evidence to establish that she had been continuously physically present in the United States from March 9, 2001, to the date of filing the application.

On appeal, 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 alien 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 § 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.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 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).

The record shows that the applicant filed her TPS application on September 11, 2002. In a notice of intent to deny dated May 28, 2003, the applicant was requested to submit evidence establishing her eligibility for late registration. She was also requested to submit evidence that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. In response, the applicant submitted:

1. Copies of pay statements dated May 23, 2000 and June 6, 2000.
2. A copy of a receipt from Ashburn Medical Center dated September 6, 2000.

In another notice of intent to deny dated January 20, 2004, the applicant was requested to submit additional evidence to establish continuous residence and continuous physical presence in the United States during the requisite period. The applicant failed to respond.

The director noted that although the applicant was requested to submit evidence of her eligibility to file under the late initial filing provisions of TPS, it has since been discovered that the applicant mailed her application by the deadline for initial registration. The director further noted that the applicant stated on her application that she entered the United States in June 2000; however, she submitted pay statements dated May and June 2000 (No. 1 above). Based on the applicant's failure to respond to his request for additional evidence, the director denied the application on March 24, 2004.

On April 16, 2004, the applicant filed a motion to reopen her case. She claimed that she did not receive the director's request for additional evidence. She submitted:

3. Copies of pay statements dated January 23, 2001; February 6, 2001; February 20, 2001; March 19, 2001; and October 19, 2002.

The director granted the motion to reopen, and after a complete review of the record of proceeding, the director determined that the evidence submitted with the motion satisfied the continuous residence requirement; however, the evidence was insufficient to establish continuous physical presence from March 9, 2001, to the date of filing the application. The director, therefore, denied the application on June 18, 2004.

On appeal, the applicant asserts that she was physically present in the United States from March 9, 2003 [sic] through the date she filed her application on September 11, 2002. She resubmits copies of her pay statements dated March 19, 2001 and October 19, 2002 (listed in No. 3 above). She also submits:

4. A copy of a pay statement dated October 11, 2002.

The evidence furnished by the applicant, listed as Nos. 2 and 3 above, establishes that the applicant has continuously resided in the United States since prior to February 13, 2001, through March 2001. However, no evidence was furnished to establish that the applicant has been continuously physically present in the United States from March 2001 to the date she filed her application on September 11, 2002.

The record shows that the applicant indicated on the Form I-821 TPS application, on the Form I-821 re-registration, and on the Form I-765, Application for Employment Authorization, that she entered the United States in June 2000. However, as noted by the director, the applicant submitted pay statements dated May 23, 2000 and June 6, 2000 (No. 1 above), prior to her claimed entry into the United States. The applicant neither addressed nor rebutted this finding of the director.

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, in fact, 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 discrepancy in the evidence she provided. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

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 documents noted above are not considered credible and greatly reduce the credibility of other documents contained in the record of proceeding.

The applicant has failed to establish that she has met the criteria for continuous physical presence in the United States since March 9, 2001. 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application will be affirmed.

Additionally, it is noted that the applicant filed her TPS application on September 11, 2002, after the initial registration period for El Salvadorans (from March 9, 2001 to September 9, 2002) had closed. The director noted that it had since been discovered that the applicant mailed her application by the deadline for initial registration.

8 C.F.R. § 103.2(a)(7) states, in part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and....shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted.

The TPS application was properly received at the Service Center on September 11, 2002, after the initial registration period had closed. Therefore, the finding of the director that the application was timely filed because the applicant "mailed her application by the deadline for initial registration" is withdrawn. There is no evidence in the record that the applicant fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). Accordingly, the application will also be denied for this reason.

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.