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Office: VERMONT SERVICE CENTER

Date: OCT 05 2005

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IN RE:

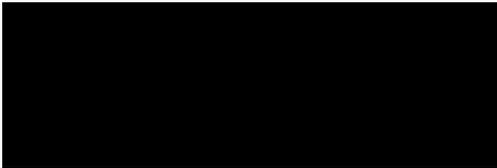
Applicant:



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 determined that the applicant failed to establish 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. The director, therefore, denied the application.

On appeal, the applicant asserts that she entered the United States on December 14, 2000 but left the country on March 11, 2001.

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 as 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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 *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 Salvador 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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite 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 filed her initial application on September 7, 2002. That application was denied on October 21, 2003 because the applicant failed to establish her continuous residence and continuous physical presence in the United States during the qualifying period. The applicant failed to appeal the director's decision.

The record shows that the applicant filed this TPS application on November 1, 2003. On March 17, 2004, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant was also requested to submit a personal statement and evidence of the

reason for her absence from the United States between March 11, 2001 and June 16, 2001. The applicant was also requested to submit the original of the copy of a receipt from the Manchester Community Health Center which she submitted with her TPS application. The applicant, in response, provided:

1. A personal statement in which she stated that she left the United States on March 11, 2001 to return to El Salvador because of the earthquake. The applicant said that she returned to the United States on June 16, 2001.
2. An undated photograph purported to be of her damaged house in El Salvador.
3. Copies of the receipt from Manchester Community Health Center, a Patient Ledger from an unidentified source showing dates from October 15, 2003 to March 5, 2004, and a bill from Pathology Specialists, Amherst, New Hampshire for services rendered on August 29, 2001.
4. Copies of payment receipt statements by [REDACTED] dated January 1, 2001, February 2, 2001, July 1, 2001, March 1, 2002, and May 1, 2002.

The applicant also resubmitted evidence previously provided.

The director determined that the applicant failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the qualifying period. The director also determined that the applicant did not submit the original Manchester Community Health Center receipt as requested. Therefore, the director denied the application.

On appeal, the applicant again states that she entered the United States on December 14, 2000 with a B2 visitor visa, but left the country on March 11, 2001 to travel to El Salvador for an emergency. The applicant also resubmits evidence previously provided. The applicant submitted another copy of a receipt from Manchester Community Health Center indicating the applicant's initial visit was on January 1, 2001. However, the document appears to have been altered. The applicant failed to provide the original receipt. 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 had also submitted statements from [REDACTED] Pastor, Spanish American Baptist Church, Manchester, New Hampshire, [REDACTED] Hampshire Minority Health Coalition, Manchester, New Hampshire, and [REDACTED]. [REDACTED] stated that he has known the applicant since 2000 and that she has assisted the church. However, the statement 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 his involvement with the church. [REDACTED] stated that she has known the applicant since January 2001 and that the applicant has been a participant of her organization's "Woman to Woman" program. [REDACTED] states that the applicant lived with her from December 2000 through May 2002. However, these statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant 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 residence or physical presence. The remaining evidence provided by the applicant are dated subsequent to the requisite dates to establish continuous residence and continuous physical presence in the United States during the qualifying period. Moreover, the applicant has not established that her absence from the United States from the United States was brief, casual and innocent. This is further evidence that the applicant has not met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c).

The applicant has not submitted sufficient evidence to establish that she has met the criteria for continuous residence and continuous physical presence 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.

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.