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Office: VERMONT SERVICE CENTER

Date: **OCT 05 2005**

[EAC 03 077 53865]

IN RE:

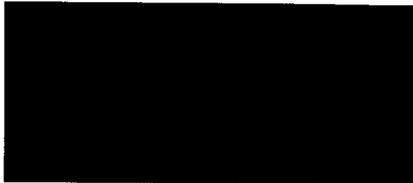
Applicant:



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 denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

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 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 § 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.
- (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 the latest extension granted 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 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 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).

The applicant indicated on her TPS application that she entered the United States without inspection on December 20, 2000. In support of her application, she submitted the following:

1. an affidavit from Virginia Santiago of Freeport, New York, stating that the applicant came to the United States in December 2000; and,
2. a letter dated August 21, 2002, from [REDACTED] Deacon of Our Holy Redeemer Parish Outreach in Freeport, New York, stating that the applicant is a registered member of his parish.

On October 16, 2003, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant, in response, provided:

3. a letter dated November 4, 2003, from [REDACTED] stating that the applicant has worked for her as a live-in babysitter in her home located at [REDACTED], New York, Monday through Friday since January 2001; and,
4. a letter dated November 7, 2003, from [REDACTED] stating that the applicant lived at [REDACTED] in Freeport, New York, from December 2000 until June 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on February 11, 2004.

On appeal, counsel for the applicant reiterates the applicant's claim that she entered the United States on December 20, 2000, and that she lived with relatives from December 2000 to January 2001, when she started a job as a live-in babysitter. Counsel submits the following:

5. an affidavit dated March 1, 2004, from [REDACTED] stating that the applicant has worked for her from Monday through Friday as a live-in babysitter since January 2001; and,
6. an affidavit dated February 28, 2004, from Ana de [REDACTED] the applicant's mother and a TPS registrant (CIS registration number [REDACTED]) stating that the applicant arrived in the United States in December of 2000 and has resided in this country since that date. Ms. [REDACTED] further states that the applicant works as a live-in babysitter Monday through Friday and comes to stay with her at her home located at [REDACTED] in Roosevelt, New York, on the weekends.

The letter from [REDACTED] (No. 2 above) 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, Mr. [REDACTED] does not explain the origin of the information to which he attests, nor does he provide the date the applicant began attending services at his parish or the address where the applicant resided during the period of her involvement with the church.

The employment letters from Ms. [REDACTED] (Nos. 3 and 5 above) have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of her employment.

The applicant's mother, [REDACTED] (No. 6 above) states in her affidavit that the applicant has lived in the United States since December 2000. This statement is contradicted by information provided by Ms. [REDACTED] in her initial Form I-821, Application for Temporary Protected Status, as well as her subsequent re-registration applications. Ms. [REDACTED] indicated on her original Form I-821, filed on March 22, 2001, under CIS receipt number EAC 01 155 53650, that the applicant was living in El Salvador as of the date of filing of the application. Ms. [REDACTED] was granted Temporary Protected Status on August 14, 2001. When she filed her TPS re-registration application on September 18, 2002, under CIS receipt number EAC 03 045 50366, she once again indicated on the Form I-821 that the applicant was living in El Salvador as of the filing date of the application. When Ms. [REDACTED] filed her next re-registration application on August 28, 2003, under CIS receipt number EAC [REDACTED] she once again indicated that the applicant was living in El Salvador as of the filing date of the application. These statements contradict the assertions made in the affidavits and letters listed in Nos. 1 through 6 above, that the applicant arrived in the United States in December 2000.

The applicant has not provided any explanation for these discrepancies in her claimed date of entry into the United States. 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 visa petition. Further, it is incumbent on 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. (Comm. 1988).

Furthermore, the affidavits from Virginia Santiago (No. 1 above) and Pedro Santiago (No. 4 above) are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant claims to have lived in the United States since December 2000. It is reasonable to expect that she would have some type of contemporaneous documents to corroborate these affidavits; however, no such evidence has been provided. Without corroborative evidence, affidavits are not sufficient to establish an applicant's qualifying continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(2)(i) and (v).

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the residence and 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 an official Salvadoran photo identification document to establish her identity and nationality as set forth at 8 C.F.R. § 244.2(a)(1). Therefore, the application also must 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.