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MI

[REDACTED]

FILE: [REDACTED]  
[EAC 02 113 52152]

OFFICE: VERMONT SERVICE CENTER

DATE: **JAN 06 2006**

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied, reopened on motion, and denied again 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 that 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.

On appeal, the applicant asserts her claim of eligibility for TPS.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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. An extension of the TPS designation has been granted 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 applicant initially submitted the following documentation along with her TPS application:

1. A letter dated February 4, 2002 from the Director of Hispanic Ministry of the Church of Saint Patrick in which he stated that a member of the church's outreach services has vouched for the applicant residing [REDACTED] for the past two years.

On June 10, 2003, the applicant was requested to submit evidence establishing her continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant failed to respond to the director's request for evidence to establish her eligibility for TPS.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on August 4, 2003. The applicant filed an untimely appeal that was treated by the director as a motion to reopen.

On motion, the applicant reasserted her claim of eligibility for TPS and submitted the following documentation:

2. A letter dated September of 2003 from St. Kilian Parish in which the Reverend states that the applicant has lived in Farmingdale, New York, since 2000 and has worked as a cook during this time at a community deli;
3. An affidavit from [REDACTED] owner of Favio Deli Grocery of Farmindale, New York, in which he states that the applicant has been employed at his establishment since December of 2000;
4. A letter from the owner and operator of McDonald's Restaurant located in Glen Cove, New York, in which he states that the applicant lived at [REDACTED] and worked at the restaurant from October 18, 2001 to September of 2002;
5. An affidavit from [REDACTED] dated September 22, 2003 in which he states that he has known the applicant for two years and that she lives at [REDACTED]
6. Copies of patient accounting statements from Nassau University Medical Center dated June 12, 2003, with a visiting date of May 21, 2003, and bearing the applicant's name as patient.

The director determined on motion that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and again denied the application on June 18, 2004.

On appeal, the applicant submits the following documentation:

7. A notarized affidavit from [REDACTED] dated July 16, 2004 in which she states that she has known the applicant for five years and that the applicant is an hard working and honest person;
8. A letter from [REDACTED] in which it is stated that she has known the applicant since December of 2000;
9. A notarized letter dated July 6, 2004, [REDACTED] of Favio Deli Grocery in which he states that the applicant has been employed at his establishment since June of 2000 and that she is a very loyal employee;
10. A copy of the applicant's IRS Form 1040, U.S. Individual Income Tax Return for the years 2001 and 2002; and,
11. A copy of rent receipts dated April 1, 2001, November 1, 2001, and February 1, 2002, and bearing the applicant's name as renter [REDACTED] those months.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. In the letter from the Church of Saint Patrick (No. 1 above) it is stated that the applicant resided at [REDACTED] since February of 2000. In contrast, in the letter from St. Kilian Parish (No. 2 above) the reverend stated that the applicant resided in Farmingdale, New York, since 2000. In addition, the owner of Favio Deli Grocery initially stated that his establishment employed the applicant since December of 2000 (No. 3 above). In a notarized statement dated July 6, 2004, (No. 9 above) the same owner of Favio Deli Grocery stated that his establishment employed the applicant since June of 2000. It is noted that the owner of the McDonald's Restaurant stated in his affidavit (No. 4 above) that the applicant worked for the restaurant from October 18, 2001, to September of 2002 and resided at [REDACTED]. It is also noted that in contrast the applicant's 2001 IRS Form 1040 (No. 10 above) and rent receipts for April and November of 2001,

and February of 2002 (No. 11 above) lists her address as [REDACTED]. 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 inconsistencies regarding her employment and place of residence during the requisite period.

The affidavits submitted as evidence are inconclusive and do not explain the origin of the information to which they attest. There has been no corroborative evidence submitted to support the statements made by [REDACTED] (Nos. 5, 7, and 8 above) regarding the applicant's claimed presence in the United States since December of 2000. The applicant claims to have entered into the United States in December of 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support the statements made by the affiants; however, there has been no such evidence provided. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v).

The Nassau University Medical Center statements (No. 6 above) are dated May and June of 2003, which is subsequent to the requisite time period, and therefore cannot be used to establish continuous residence and continuous physical presence in the United States. The applicant has failed to establish that she has met the continuous residence and continuous physical presence 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.