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U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] OFFICE: VERMONT SERVICE CENTER DATE: SEP 1 2 2006
[EAC 03 248 55639]

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, Chief
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 establish 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.

On appeal, counsel asserts that the applicant has been present in the United States since February 2000, and that she was granted temporary protected status in 2001. He furnished copies of the applicant's Employment Authorization Cards (EAD) to support his assertion. Counsel further asserts that due to the applicant's immigrant status in this country, she could not obtain evidence such as utility bills, medical records, identification card, and/or other evidence showing that she was present in the United States since February 2000. He submits additional evidence.

The fact that the applicant was issued EADs is not evidence that she was approved TPS. Based upon filing of the I-821 application for TPS, the applicant was afforded temporary treatment benefits and was issued Employment Authorization upon establishing *prima facie* eligibility[1] for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS.

Counsel has requested oral argument in this case. A request for oral argument must set forth facts explaining specifically why oral argument is necessary. 8 C.F.R. 103.3(b). In this case, no cause for oral argument is shown. Counsel has clearly and precisely constructed his arguments on appeal. No further explanation of the facts and issues need be made. Counsel's request for oral argument is, therefore, denied.

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

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[1] Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if unrebutted will establish a claim of eligibility under section 244 of the Act.

(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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, 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 December 4, 2001. In a notice of intent to deny (NOID) dated March 10, 2004, the applicant was requested to submit evidence establishing her continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. The director reviewed the evidence furnished by the applicant in

response to the request for additional evidence. She noted that the evidence furnished was not sufficient to cover the time period required for the TPS program and denied the application on July 9, 2004.

On appeal, counsel submits the following:

1. An undated statement from indicating that he resides at 4011 Brookmeade, Houston, Texas, and certifying that he has known the applicant since February 2000, and that the applicant worked for him as a housekeeper from March 2000 to March 20, 2002. It is noted that although this statement was notarized, the Notary Public failed to date the document.

2. A copy of a previously furnished statement dated March 29, 2004, from indicating that her niece, the applicant, came to the United States on February 2, 2000, and since lived with her until April 2002

No. 1 above) failed to list on his statement the address where the applicant was residing, it is noted that the record indicates that during the claimed to have known the applicant and to have worked for him, the applicant was residing at the same listed as his own address, However, No. 2 above) indicated that the applicant resided with her from February 2000 to April 2002 A review of the record failed to show that the applicant claimed to have ever resided at this address. The inconsistencies of these statements raise questions of credibility. 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 evidence furnished is not considered credible and greatly reduces the credibility of other documents contained in the record of proceeding.

Additionally, regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided to establish the applicant's qualifying residence in the United States were not supported by any other corroborative evidence, although the director listed on the NOID the acceptable evidence she could submit to establish eligibility.

It is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, 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.