



U.S. Citizenship
and Immigration
Services

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JAN 03 2007

FILE:

Office: VERMONT SERVICE CENTER

Date:

[redacted] - consolidated herein]

[EAC 01 234 53786]

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.

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 (AAO) 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 continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits a letter and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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.

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 by the Secretary of the Department of Homeland Security, with the latest granted 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 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 filed her initial Form I-821, Application for Temporary Protected Status, on July 26, 2001. In support of her application, the applicant submitted:

1. A photocopy of an [REDACTED] receipt, dated August 15, 1999.

On July 1, 2003, the director requested the applicant to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director specifically advised the applicant that acceptable evidence might include, but is not limited to, employment or school records, rent or medical receipts, bank or insurance documents, medical or utility bills, or other similar

documentation. In response, the applicant submitted documentation including evidence of her nationality and identity, as well as:

2. Photocopies of earnings statements for the one-week pay periods ending September 29, 2001; October 6, 2001; and, November 10, 2001; and,
3. Affidavits from two acquaintances attesting to their knowledge of the applicant.

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 time periods, and denied the application on September 4, 2003.

On appeal, the applicant submits the following additional documentation:

4. A letter from [REDACTED] stating that the applicant is a registered member of the parish, [REDACTED]
5. An affidavit from [REDACTED] stating that the applicant was employed by her from January 1999 to September 1, 2001;
6. Photocopies of 2001 and 2002 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements;
7. A letter from [REDACTED] stating that the applicant had been a client since January 10, 2001;
8. A photocopy of a "Certificate of Appreciation" from the [REDACTED] dated October 23, 2001;
9. Photocopies of earnings statements for the one-week pay periods ending November 17, 2001, and December 8, 2001.

The applicant claims to have lived in the United States since July 1998. It is reasonable to expect that she would have a variety of objective contemporaneous evidence to support this claim. Affidavits from acquaintances (No. 3, above) are not, by themselves, persuasive evidence of residence or physical presence. While the documentation in No. 6 indicates that the applicant was present in the United States at some point in 2001, No. 1 is dated before the required dates, and Nos. 2, 8, and 9 are dated beyond the required dates. Nos. 5 and 7 are not supported by objective evidence. The church letter (No. 4) has little evidentiary weight or probative value as it does not provide the specific date that the applicant was officially registered as a parishioner.

Furthermore, there are discrepancies noted in the documentation provided by the applicant. The applicant claimed on her initial application that she had never used another name and had never been in immigration proceedings. However, a review of CIS records reveals that the applicant an Immigration Judge ordered the applicant, under the name of [REDACTED] removed from the United States to El Salvador on July 20, 1998. That order remains outstanding.

These discrepancies have not been explained and call into question in the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application.

It is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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).

It is concluded that the applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, or her continuous physical presence in the United States since March 9, 2001. She has, therefore, failed to establish that she has met the criteria 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.