



U.S. Citizenship
and Immigration
Services

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MI

[REDACTED]

FILE:

[REDACTED]
[EAC 02 240 53505]

Office: VERMONT SERVICE CENTER

Date: JUL 11 2007

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be granted and 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 on June 6, 2003, due to abandonment, because the applicant failed to respond to the director's request for evidence. The applicant filed a motion to reopen on October 31, 2003. The director opened the application on motion and sent the applicant a notice of intent to deny dated June 7, 2004. The applicant responded to the notice of intent to deny on June 16, 2004. The director denied the application on September 3, 2004, because the applicant failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant filed an appeal on September 18, 2004. The AAO dismissed the appeal on December 28, 2005, after the Director of the AAO also concluded that the applicant had failed to establish her continuous residence and continuous physical presence in the United States during the requisite time periods.

On motion to reopen, the applicant reasserts her claim of eligibility for TPS and submits evidence in an attempt to establish her qualifying residence and physical presence in the United States.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

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 program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. 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 initial TPS application on July 5, 2002. In support of her application, the applicant submitted: a copy of her birth certificate, with English translations; a copy of her El Salvadoran identification card (Cedula); and, statements from [REDACTED] and [REDACTED]

In response to the director's request for evidence dated June 7, 2004, the applicant submitted a copy of a handwritten generic rent receipt dated February 13, 2001, copies of certificates from Hempstead, New York Public Schools dated June 20, 2002, copies of date-stamped envelopes dated August 16, 2002. The applicant also submitted as evidence copies of Urgente Express money order receipts dated November of 2002, and January through June of 2003, copies of Western Union money order receipts dated December of 2002 through June of 2004, and copies of earnings statements from Courier Dover Publications, Inc., dated April through June of 2004.

On appeal of the director's decision dated September 3, 2004, the applicant submitted statements from [REDACTED] and [REDACTED]. The applicant also submitted statements from [REDACTED] and [REDACTED] all of who stated that they have known the applicant since 2000. [REDACTED] stated that he has known the applicant since 1989.

The AAO determined that the applicant had failed to submit corroborating evidence to support the statements and the rent receipts she had submitted. Likewise, the AAO determined that the Hempstead Public School records submitted by the applicant, that were dated June 20, 2002, were the earliest dates presented as evidence of the applicant's presence in the United States.

On motion to reopen, the applicant submits a letter from the Program Administrator of Hempstead Public Schools in which she states that the applicant attended the Hempstead Adult and Community Education Program from January 3, 2001 through December 19, 2002. The applicant also submits copies of her attendance records, school registration, and course schedules from the Hempstead Adult and Community Education Program for the 2001, 2002, and 2003 academic years. In addition, the applicant submits a copy of her Certificate of Participation, Certificate of Attendance, and Certificate of Completion from the Hempstead Adult and Community Education Program during the 2001 and 2002 academic years.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the period from February 13, 2001, to July 5, 2002, the date of filing. The applicant submitted school records that showed that she was a student at the Hempstead Adult Education Program since January 3, 2001. However, the applicant also submitted a copy of her signed Cedula (her El Salvadoran Identification Card) that was issued to her on January 9, 2001, in El Salvador. This evidence directly contradicts the statements made by the applicant. 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 also noted that the applicant indicated on her Form I-821, Part 2 that she has been in the United States since December 20, 2000. 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.

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).

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated December 28, 2005, is affirmed.