



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: MAR 27 2007

[EAC 02 276 55692]

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:

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The applicant appealed the decision of the AAO. A motion to reopen, rather than an appeal, is the proper forum in this case, pursuant to 8 C.F.R. § 103.5(a)(1)(i). The appeal, therefore, will be treated as a motion to reopen. The motion will be dismissed, and the previous decision of the AAO will be affirmed.

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 May 14, 2003, after determining that the applicant had failed to establish that she had continuously resided in the United States since February 13, 2001.

The AAO reviewed the record of proceeding and noted that the affidavits furnished by the applicant were not supported by any corroborative evidence, and also noted that although the affidavits indicated that the applicant had been living in the United States since prior to February 13, 2001, the record indicates that the applicant was apprehended by the United States Border Patrol near Brownsville, Texas, on December 14, 2001. The AAO concluded that the applicant had not submitted sufficient credible evidence to establish her qualifying residence in the United States since February 13, 2001, and dismissed the appeal on September 13, 2004.

On motion, the applicant asserts that she was in the United States, living in Boston, Massachusetts, before and after February 13, 2001, and that in December 2001, she went to Texas to pick up her son. She submits additional evidence in an attempt to establish residence and physical presence in the United States since 2000, including evidence under the name of [REDACTED] and [REDACTED].

The record indicates that two other files were created for the applicant: [REDACTED] and [REDACTED]. Upon review of file [REDACTED], it is noted that the applicant was apprehended by the United States Border Patrol near Brownsville, Texas, on February 27, 1989, while attempting to enter the United States without inspection. In removal proceedings held on March 9, 1989, the Immigration Judge ordered that the applicant be deported [removed] from the United States to El Salvador. A Warrant of Deportation, Form I-205, was issued on March 14, 1989, in Los Fresnos, Texas, and on March 22, 1989, the applicant was removed to El Salvador.

Upon review of file A78 325 689, it is noted that Form I-213, Record of Deportable/Inadmissible Alien, was issued on December 14, 2001, indicating that on that date, the applicant and her minor son were apprehended by the United States Border Patrol near Brownsville, Texas, while attempting to enter the United States without inspection. The applicant admitted to the officers that she illegally entered the United States by wading across the Rio Grande on or about December 14, 2001, and that she was not inspected, paroled, or admitted by an immigration officer. She further admitted that she departed from El Salvador with her son on or about October 15, 2001, and stayed with relatives in Guatemala for approximately 15 days before departing for the Mexican border. After entering Mexico, she again stayed with relatives in Guadalajara, and on or about December 5, 2001, she traveled to Matamoros. On December 14, 2001, she illegally entered the United States. That file contains an El Salvadoran passport issued to the applicant in San Salvador, El Salvador, on July 26, 2001. In removal proceedings held on August 28, 2002, in Boston, Massachusetts, the applicant failed to appear; therefore, the Immigration Judge determined that the applicant had abandoned any and all claims for relief from removal and ordered the applicant removed to El Salvador *in absentia*. A Form I-205, Warrant of Removal/Deportation, was issued on September 20, 2002.

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 sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The applicant was not in the United States during the requisite periods required to establish continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Therefore, the reliability of the evidence furnished in an attempt to establish residence and physical presence offered by the applicant, on appeal, is suspect.

Accordingly, the motion will be dismissed, and the previous decision of the AAO will be affirmed.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The motion is dismissed. The decision of the AAO dated September 13, 2004, is affirmed.