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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: APR 0 8 2004

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.

Robert P. Wiemann, Director
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 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 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 asserted her claim of eligibility for TPS and submitted evidence in support of her claim.

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 temporary protected status 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 under section 244.3;

(e) is not ineligible under 8 C.F.R. § 244.4; and

(f) (1) registers for TPS during the initial registration period, or

(2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:

(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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

> (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
>
> (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
>
> (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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).

Along with her application for TPS, the applicant submitted the following documentation:

1. A copy of her Salvadoran birth certificate along with an English translation.
2. A copy of the biographical pages of her Salvadoran passport.
3. A copy of her marriage license dated April 13, 2001.
4. A copy of her marriage certificate issued on April 11, 2001.
5. Copies of her children's birth certificates issued by the State of Maryland which indicate birth dates of August 19, 1997 and September 27, 1999.

On February 21, 2003, the applicant was requested to submit evidence establishing her residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

6. A copy of her marriage license as detailed in No. 3 above.
7. A copy of her daughter's vaccine administration record.
8. A copy of a lease agreement between Stavroe Associates and her husband, Mr. for the period from September 16, 2002 and September 30, 2003.
9. A copy of the applicant's Comcast bill for the period from February 8, 2003 to March 7, 2003.
10. A copy of the applicant's receipt from the Langley Park Pharmacy dated March 18, 2002.
11. A copy a bill from the R.P. Mercal Finance Co. dated March 5, 1999.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on April 24, 2003. On appeal, the applicant reasserted her claim and submitted the following documentation:

12. Copies of her joint Internal Revenue Service (IRS) Federal Income Tax 1040 forms for the years 2000 and 2001.
13. Copies of her Maryland State Income Tax Forms 502 for the years 2000 and 2001.
14. Copies of her husband's IRS Forms 1099-MISC for the years 2000 and 2001.

In addition, the applicant resubmitted copies of No. 5 as detailed above. The documentation detailed in No. 7 above may suggest that the applicant's daughter was in the United States during the years 1999, 2000, and 2001. However, the burden is on the applicant to establish her own residence since February 13, 2001, and physical presence since March 9, 2001. The applicant has failed to provide other contemporaneous evidence that would establish the dates of her presence and residence in the United States.

The submitted income tax forms indicate that the applicant was married to Mr. Blas Moreno during the year 2000; however, the record contains documentation indicating that the applicant did not marry Mr. Moreno until April 13, 2001. Further, the tax returns from the years 2000 and 2001 are not signed by the applicant. In addition, the fact that the applicant is listed on the tax return does not demonstrate her actual physical presence and residence in the United States.

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 applicant has failed to submit any objective evidence to explain or justify the discrepancies as noted above.

The applicant has not submitted sufficient credible evidence to establish her qualifying residence in the United States since February 13, 2001, or her 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.

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.