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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

MAR 29 2004

FILE: [redacted] Office: Texas Service Center Date:

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, Texas 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 continuously resided in the United States since February 13, 2001.

On appeal, the applicant stated that the individual who filed her TPS application made a mistake on the date in which she had entered the United States.

Although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) has been submitted, it does not appear that the individual named is authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented.

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, the applicant provided the following documentation:

1. Copies of her Salvadoran birth certificate along with an English translation.
2. Copies of her Salvadoran personal identification card.

3. A copy of an affidavit dated March 17, 2001 from Mr. Milton Noel Ventura, who attested to the applicant's residence in the United States since December 2000.
4. A copy of an affidavit dated April 19, 2001 from Mr. Wayne Lee, who attested to the applicant's continual residence in the United States since December 2000.

On January 21, 2003, and on February 20, 2003, the applicant was requested to submit evidence establishing her residence in the United States since February 13, 2001. The applicant, in response, provided the following documentation:

5. An affidavit dated March 2, 2003 from Mr. Oscar Mauricio Flores, who stated that the applicant was employed in his home as a babysitter from November 2000 to May 2001.
6. An affidavit dated March 4, 2003 from Mr. Mario R. Alvarez, who stated that he had known the applicant since November 2000, and that the applicant had cared for his son from December 1, 2000 to October 1, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on March 14, 2003. On appeal, the applicant submitted the following documentation:

7. Copies of her Employment Authorization Document (EAD), Texas Department of Public Safety "Under 21 Identification Card", and her Social Security card.

The director denied her application for TPS, because of the discrepancies in the information attested to on the submitted affidavits, as detailed in Nos. 5 and 6 above, and the information the applicant stated on her application for TPS. The affiant to No. 5 above stated that the applicant was employed in his home as a babysitter from November 2000 to May 2001. It is worth noting, however, that the applicant indicated on both her application for TPS and employment authorization that she did not enter the United States until December 2000. Further, the applicant signed these applications certifying that the information was true and correct.

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 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. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

Furthermore, the affidavits submitted by the applicant are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some contemporaneous evidence to support these affidavits; however, no such evidence has been provided.

The applicant has failed to establish her qualifying residence in the United States since February 13, 2001. 8 C.F.R. § 244.2(b). 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.