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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

MAY 27 2004

FILE: [redacted] Office: NEBRASKA 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, Nebraska 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 determined that the applicant failed to establish: 1) she had entered the United States prior to February 13, 2001; 2) she had continuously resided in the United States since February 13, 2001; and 3) she had been continuously physically present in the United States since March 9, 2001

On appeal, the applicant states she has not worked during the entire time she has been in the United States, therefore, she does not have evidence for "the early part of the year." The applicant submits additional evidence of her residence in the United States.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status 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 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 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 condition described in paragraph (f)(2) of this section.

Continuously physically present 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.

Continuously resided 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 entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 the director. 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).

On January 18, 2003, the applicant was provided the opportunity to submit evidence establishing that she had entered the United States prior to February 13, 2001, and that she had continuously resided in the United States since February 13, 2001 and she had been physically present in the United States since March 9, 2001. The applicant was also requested to submit a copy of her birth certificate together with an English translation, and a photo identity document. The applicant, in response, submitted: 1) a copy of the biographic pages from her Salvadoran passport; 2) a generic letter dated February 28, 2003, from a Judith Cubias, verifying that she had known the applicant since January 2001; and, 3) a copy of a Registro De Ciudadanos, numbered 10-01 0048694, with an attached photograph.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on April 10, 2003. On appeal, the applicant submits: 1) a copy of a Western Union money transfer receipt, #94516507-8, dated January 21, 2001; and, 2) two letters addressed to the applicant in the United States, bearing postmarks of "04 Ene 01" and February 7, 2001, respectively.

The February 28, 2003 letter from Ms. Cubias states that she has known the applicant since January 2001, "when she came to the state of Virginia." Ms. Cubias states further that she "kept in touch with (the applicant) by phone since she moved to Washington in 2002." However, the envelopes postmarked "04 Ene 01" and February 7, 2001 are addressed to the applicant at 11743 South Barendo Avenue, #5, Los Angeles,

California. In addition, the Western Union money transfer document shows that the applicant transferred funds to El Salvador from Los Angeles, California, on January 21, 2001. This conflicting information raises questions as to the credibility of the applicant's evidence. 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 inconsistencies. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that she has continuously resided in the United States since February 13, 2001, and she has been continuously physically present in the United States from March 9, 2001 to the date she filed the application for TPS on September 9, 2002.

The applicant has not submitted sufficient evidence 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.