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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAY 15 2012** Office: VERMONT SERVICE CENTER

FILE:

IN RE: Applicant:

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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, counsel submits additional evidence in an attempt to establish the applicant's continuous residence and continuous physical presence in the United States.

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 TPS 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 Secretary 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 Temporary Protected Status 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.

The term *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 term *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.

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. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until September 9, 2013, 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 U.S. Citizenship and Immigration Services (USCIS). 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On March 8, 2005, the applicant filed her initial application [REDACTED]. On June 19, 2006, the applicant was requested to submit evidence establishing her: a) date of entry into the United States; b) nationality and identity; c) eligibility for late registration; d) continuous residence since February 13, 2001 in the United States; and e) continuous physical presence since March 9, 2001 in the United States. The applicant was provided 30 days in which to submit the requested documents. The applicant, however, failed to respond to the notice, and on August 28, 2006, the Director, California Service Center, denied the application due to abandonment. No motion was filed from the denial of that application.¹

¹ A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The applicant filed the current TPS application and submitted evidence to establish her nationality and identity and eligibility for late registration under 8 C.F.R. § 244. 2(f)(2)(iv). In an attempt to establish continuous residence and continuous physical presence in the United States during the requisite periods, the applicant submitted:

- Copies of her Florida driver's licenses issued on August 5, 2005 and November 13, 2007.
- Uncertified Forms 1040, U.S. Individual Income Tax Return, for 2005 to 2009.
- Her spouse's Form W-2, Wage and Tax Statement, for 2005 and 2009; Form 1098, Mortgage Interest Statement, for 2007; and Form 1099-MISC, Miscellaneous Income, for 2006.
- A letter dated August 2, 2005, from the Internal Revenue Service addressed to the applicant and her spouse regarding the submission of a Form W-7, Application for IRS Individual Taxpayer Identification Number.
- A billing statement from [REDACTED] dated August 20, 2010, addressed to the applicant's spouse.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS because she had not provided any new and compelling evidence that overcame the reasons for denying the initial TPS application. The director also determined that "USCIS records contain evidence of money transferred to you at an El Salvador address on October 10, 2001, and on July 7, 2002." Accordingly, on June 23, 2011, the director denied the application.

On appeal, counsel submits the following:

- Affidavits from [REDACTED] who indicate that they have personally known the applicant since December 2000. The affiants attested to the applicant's moral character. [REDACTED] indicates that the applicant takes care of her children.
- An affidavit from [REDACTED] who indicates that she has known the applicant since September 2000. The affiants attested to the applicant's moral character.
- An affidavit dated July 19, 2011, from [REDACTED] who indicates that she has been a co-worker of the applicant for the last ten years. The affiants attested to the applicant's moral character.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The affiants' statements do not provide detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite periods. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the

applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

As previously noted, the director indicated that USCIS records contained two money grams addressed to the applicant at an El Salvadoran address during the time she claimed to have been in the United States. It is reasonable to expect an explanation from the applicant in order to resolve the contradictions. However, the applicant, on appeal, has not addressed the director's finding.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the requisite periods. She has, thereby, 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 TPS will be affirmed.

An alien applying for TPS 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.