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U.S. Citizenship
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FILE:

[REDACTED]
[EAC 03 032 53837]

Office: VERMONT SERVICE CENTER

Date: **JUL 29 2005**

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:

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 her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel for the applicant asserts that she qualifies for TPS in that she has submitted sufficient evidence to establish residency and physical presence in the United States since February 13, 2001.

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 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 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.
- (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 conditions described in paragraph (f)(2) of this section.

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.

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. A subsequent extension of the TPS designation has been granted with validity until September 9, 2006, 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 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).

The applicant initially submitted the following documentation:

1. An affidavit from [REDACTED] dated August 13, 2002, in which he states that he has known the applicant for four years and that she came to the United States on February 20, 2001; and
2. An affidavit from [REDACTED] dated July 31, 2002, in which he states that he has known the applicant and her son for five years, that he met the applicant through her husband, and that the applicant and her son immigrated to the United States February 10, 2002.

On January 14, 2004, the applicant was requested to submit evidence establishing her continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United. The applicant, in response, provided the following documentation:

3. Three receipts from [REDACTED] in the amount of \$25.00 each, for house cleaning services dated January, February, and April of 2001, and bearing the applicant's name as receiver;
4. A tax notice from the Internal Revenue Service, dated December 17, 2001, and addressed to the applicant at [REDACTED] Richmond, Virginia;
5. A letter from the Commonwealth of Virginia, Department of Taxation, dated February 27, 2002, acknowledging the \$20.00 contribution from 2001 Income Tax Overpayment made to the Family and Children's Trust Fund by the applicant and her husband;
6. Utility bills from the City of Richmond bearing the applicant's and her husband's name, and dated November and December of 2002, and December of 2003;
7. A letter from Reverend [REDACTED] in which he states that the applicant has been a formally registered member of St. Augustine Parish in Richmond, Virginia since June 4, 2003;
8. A letter from [REDACTED] in which she states that the applicant has been paid to clean her house at least once per month since January of 2001;
9. Copies of receipts for house cleaning services made out by [REDACTED] to the applicant, and dated from January to December of 2001; and
10. A letter from [REDACTED] in which she states that she met the applicant around December of 2000, and that the applicant has performed house-cleaning services for her.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on March 8, 2004.

On appeal, counsel reasserts the applicant's claim and submits the following documentation:

11. An amended affidavit from [REDACTED] in which he states that he mistakenly stated in the first affidavit submitted that both the applicant and her son arrived in the United States on February 10, 2001, and that he met the applicant after she arrived in the United States on February 10, 2001, and met her son in 2002;
12. A copy of a Form W-7, Application for IRS Individual Taxpayer Identification Number, dated August 15, 2001, bearing the applicant's name as the applicant; and
13. An acknowledgement letter from Cigna determining that the applicant's insurance coverage began on January 1, 2001, and ended on December 31, 2002.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to September 10, 2002. The applicant has stated in her TPS and Employment Authorization application that she came to the United States on February 10, 2001. However, based upon the documents she submitted (Nos. 3, 8, 9, 10, and 13 above), the applicant has been in the United States since December of 2000. This discrepancy directly affects the credibility of the applicant in her statements or the credibility of the witnesses. 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. Neither the pastor's letter (No. 7 above) nor the applicant's utility bills (No. 6 above) verify the applicant's presence in the United States during 2001 and 2002.

The affiants do not explain the origin of the information to which they attest in their affidavits (Nos. 1, 2, and 13 above), nor do they provide the address where the applicant resided during the period of their relationship. Further, the amended affidavit submitted by Salvador Gomez on appeal, only after the discrepancy is brought out by the director, raises serious questions regarding the truth of the facts asserted. The applicant claims to have lived in the United States since February 10, 2001. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support the documents; however, no such evidence has been provided. 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 tax documents submitted including Numbers 4, 5, and 12 above fail to corroborate the applicant's contention that she has been in the United States since February 10, 2001. The applicant has 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.

Beyond the decision of the director, the applicant has failed to submit evidence sufficient to establish her eligibility for late registration pursuant to 8 C.F.R. § 244.2(f)(2). The initial registration period ended September 9, 2002. The evidence shows that the applicant filed her TPS application on September 10, 2002. For this additional reason, the application must be denied.

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.