

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M 1



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 15 2005
[EAC 02 241 54195]

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 that 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 asserts that she has resided and been physically present in the United States since January 10, 2001, and that she thought that she had submitted sufficient evidence to establish that fact.

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.

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. An 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 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).

On February 28, 2003, 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 States. The applicant, in response, provided the following documentation:

1. An affidavit of support from [REDACTED] dated March 25, 2003, in which she states that the applicant lived with her from January 10, 2001, to January of 2002 at [REDACTED] Wheaton, Maryland;
2. An affidavit of support from [REDACTED] dated July 5, 2002, in which she states that the applicant has been her child's baby-sitter from January 20, 2001, to the present;
3. An affidavit of support from [REDACTED] via, dated July 6, 2002, in which he states that he has known the applicant since January 2001, that they met in the neighborhood, and that they continue to share the same residence of [REDACTED] Silver Spring, Maryland;
4. A memo from the Department of Health and Human Services (HHS) containing pregnancy tests results, dated January 16, 2002, and bearing the applicant's name;

5. A HHS public health services certification letter, dated January 24, 2002, and bearing the applicant's name;
6. A HHS pediatrician referral letter, dated April 12, 2002, and bearing the applicant's name; and
7. A copy of the applicant's child's birth certificate from the State of Maryland, dated July 24, 2002, and bearing the applicant's name.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on August 11, 2003.

On appeal, the applicant reasserts her claim and submits the following documentation:

8. A copy of a Worldcom invoice statement of account as of February 2, 2001, bearing the applicant's name and address of [REDACTED] and
9. A copy of an envelope from Community Clinic Inc., stamp dated January 30, 2001, and bearing the applicant's name and address of [REDACTED] Silver Spring, Maryland.

The applicant has not submitted any evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to July 8, 2002. The medical documents submitted by the applicant, Nos. 4,5,6, and 7 above, do not establish her whereabouts in 2001.

There is a discrepancy contained in the record regarding the applicant's residence in the United States. Specifically, [REDACTED] states in her affidavit (No. 1 above) that the applicant has resided with her at [REDACTED] Wheaton, Maryland from January 10, 2001, to January of 2002; [REDACTED] states in his affidavit (No. 3 above) that he has known the applicant since January of 2001, and that they continue to share the same residence [REDACTED] the Worldcom invoice is dated as of February 2, 2001, and bears an address for the applicant of [REDACTED] and the envelope from Community Clinic Inc. is dated January 30, 2001, and is addressed to the applicant at [REDACTED]

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 inconsistencies contained in the record with regard to the applicant's address. 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 continuous residency or continuous physical presence from February 13, 2001, to July 8, 2002.

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 on these grounds 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.