



U.S. Citizenship
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FILE: [REDACTED]
[EAC 03 258 53046]

Office: VERMONT SERVICE CENTER

Date: JUN 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: 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, who is a minor child, 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement and additional evidence.

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, 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 § 244.3;
- (e) Is not ineligible under § 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.

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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Subsequent extensions of the TPS designation have been granted, with the latest granted 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 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On October 17, 2003, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant was also requested to submit evidence to establish her identity and nationality. The applicant, in response, provided a photocopy of her Salvadoran birth certificate with English translation. She also provided the following:

1. a letter dated November 9, 2003, from [REDACTED] minister of St. Benedict's Rectory in Somerville, Massachusetts, stating that the applicant has been a member of his parish since December 2000;
2. an affidavit from [REDACTED] stating that the applicant's mother, [REDACTED] and her two daughters, [REDACTED] and [REDACTED] rented an apartment from him at [REDACTED] from "the year 2000 until July of 2002;" and,
3. an affidavit from [REDACTED] stating that he has known the applicant since the end of the year 2000.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on March 4, 2004.

On appeal, the applicant states that she has been physically present in the United States since "on or before February 13, 2001." She further states that her parents [REDACTED] CIS registration number [REDACTED] and [REDACTED] CIS registration number [REDACTED] have both been granted TPS. She submits the following:

4. an affidavit dated March 17, 2004, from [REDACTED] stating that she has known the applicant since "the summer of 2003;"
5. an affidavit dated March 17, 2004, from [REDACTED] stating that she has know the applicant since "approximately December 2000;"
6. an affidavit dated March 17, 2004, from [REDACTED] stating that the applicant's mother began cleaning her home in January 2001, and that she met the applicant through her mother;
7. an affidavit dated March 17, 2004, from [REDACTED] stating that she has known the applicant since January 2001; and,
8. photocopies of two Employment Authorization Cards indicating that her parents, [REDACTED] and [REDACTED] have both been granted TPS.

The applicant indicated on the Form I-821, Application for Temporary Protected Status, that she first entered the United States on February 8, 2001. This statement contradicts the statements of the affiants listed in Nos. 1 through 7 above. [REDACTED] (No. 1 above) [REDACTED] (No. 2 above), [REDACTED] (No. 3

above), and [REDACTED] (No. 5 above) all state that they have known the applicant since December 2000 or "the end of the year 2000." [REDACTED] (No. 7 above) states that she has known the applicant since January 2001. These statements contradict each other and the applicant's statement that she first entered the United States on February 8, 2001. The applicant has not provided any explanation for these discrepancies in her claimed date of entry into the United States. 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 visa petition. Further, it is incumbent on 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. (Comm. 1988).

Further, the applicant has not submitted any contemporaneous evidence such as medical records, school records, or dental records, to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the residence and physical presence requirements 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.

Beyond the decision of the director, the applicant has not provided an official national photo identification document. Therefore, she has not established her identity and nationality as set forth at 8 C.F.R. § 244.9(a)(1). Therefore, the application also must be denied for this reason.

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.