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U.S. Citizenship
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Services

APPLICANT
M

MAY 27 2005

FILE: [REDACTED]
[EAC 01 212 53020]

Office: VERMONT 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:

[REDACTED]

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 (AAO) 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 continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, 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).

The applicant properly filed her initial Form I-821, Application for Temporary Protected Status, on June 22, 2001. In support of her application, the applicant submitted:

1. A photocopy of her El Salvadoran birth certificate, with English translation;
2. A photocopy of a postmarked envelope, dated October 2000, addressed to the applicant at 402 41st Street, Union City, New Jersey; and,
3. A letter, dated March 20, 2001, from Erwing, Corp., Union City, New Jersey, stating that the applicant had been working for the company since February 5, 2001.

On November 26, 2002, and March 26, 2003, the director requested the applicant to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, counsel for the applicant submitted the following additional documentation:

4. A photocopy of a letter from the Social Security Administration, Jersey City, New Jersey, indicating that the applicant applied for a social security card on April 7, 2001;
5. A photocopy of an Internal Revenue Service (IRS) 2001 Form W-2, Wage and Tax Statement, issued to the applicant by P&A Packaging, Inc., New York, New York, showing total wages of \$1,599.13; and,
6. A letter, dated December 27, 2002, from [REDACTED] stating that the applicant resided at 402 41st Street, Union City, New Jersey, from December 2000 to May 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on August 12, 2003.

On appeal, counsel for the applicant states that the applicant has resided in the United States with her husband since 1997, and that she has only left the United States once, from October 2000 to December 2000, due to a family emergency. In support of the appeal, counsel submits:

7. A photocopy of an Admission Slip issued by the Union City Board of Education, Union City, New Jersey, to [REDACTED] March 31, 2000, signed by the applicant as the child's parent/guardian;
8. A photocopy of an Admission Slip issued by the Union City Board of Education, Union City, New Jersey, to [REDACTED] on April 6, 2000, signed by the applicant as the child's parent/guardian; and,
9. An affidavit, dated September 11, 2003, from [REDACTED] stating that the applicant lived [REDACTED] Street, Union City, New Jersey from February 6, 2000, to January 2001.

Nos. 2, 7, and 8, above, are all dated well prior to the dates required to establish continuous residence and continuous physical presence. The employment letter, No. 2, has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, it

does not provide the address where the applicant resided during the period of her employment, the period(s) of layoff (if any), and the applicant's duties with the company. Furthermore, the employment letter is not supported by contemporaneous, objective evidence, such as pay stubs and employment/tax records. Similarly, No. 5 does not establish the specific dates of the applicant's employment in 2001.

There are several discrepancies encountered in the documentation presented. The applicant claimed on her Form I-821 that she is married and the mother of four children. The record does not contain evidence of her marriage or her children's births. Although the applicant claimed that her children were all residing in El Salvador at the time she filed her TPS application on June 22, 2001, Nos. 7 and 8 indicate that two of the applicant's children (Gladis and Dilver) were attending school in the United States in 2000. It is also unclear as to the specific dates of the applicant's date(s) of residence at [REDACTED] Union City, New Jersey. No. 6 indicates that she resided at that address from December 2000 to May 2001, while No. 9 indicates that she resided at that address from February 2000 to January 2001. These discrepancies in the applicant's submissions have not been explained satisfactorily and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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).

It is concluded that the applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence and continuous physical presence in the United States. She has, therefore, 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 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.