



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 02 280 51278]

Office: VERMONT SERVICE CENTER

Date: **OCT 05 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 that she had been continuously residing in the United States since February 13, 2001, and that she had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel states that her client made every effort to obtain 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 designated by the Attorney General 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 issues raised by the director to be addressed in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and whether she has been continuously physically present in the United States since March 9, 2001.

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.

El Salvadorians applying for TPS must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

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. 8 C.F.R. § 244.9(a). The sufficiency of all evidence, however, 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).

In a notice of intent to deny, dated April 6, 2004, the applicant was requested to submit evidence establishing her continuous physical presence in the United States since March 9, 2001, and her continuous residence in the United States since February 13, 2001. In response, the applicant submitted hand written rent receipts, affidavits, and a Western Union receipt dated December 10, 2001.

The director determined that the applicant, in response to the notice of intent to deny, failed to submit evidence to establish her continuous residence and her continuous physical presence in the United States during the requisite timeframes. Consequently, the director denied the application on July 9, 2004.

On appeal, counsel submits: a copy of the applicant's cable bill showing a due date of February 22, 2001; a copy of a "PHYSICIAN PERMISSION CERTIFICATE FOR RETURN TO SCHOOL OR WORK, from the Plainfield Neighborhood Health Services Corporation, dated March 5, 2001; a copy of a letter dated July 10, 2004, from the supervisor of Injectron Inc., who states that the applicant worked as a cleaning person at the company in the year 2001; a copy of a letter dated July 14, 2004, from the office manager of the Orthopedic Medicine Center who states that the applicant was a patient at the office of [REDACTED] "back in the year 2001." The letter also states that the applicant received treatment from March 2001 to September 2001, due to "a slip and fall accident;" and a copy of a "RETURN TO WORK OR SCHOOL SLIP, dated March 5, 2001, which states:

This is to certify that [REDACTED] has been under my care for the following: Patient had a slip and fall accident. Waiting for MRI Results to determine Feather [sic] Diagnosis. and is able to return to work school on March 10, 2001. Remarks: [REDACTED] should not lefted [sic] more then [sic] 5 pounds for one week. She should stay in bed as munch [sic] as possible. If having a lot of pain in the Lumber [sic] area. go [sic] to the Hospital.

It is noted that the signature on the slip is illegible.

The documentation presented on appeal is not sufficient credible evidence to establish the applicant's continuous physical presence in the United States since March 9, 2001, and her continuous residence in the United States since February 13, 2001. The above-mentioned note from the Plainfield Neighborhood Health Services Corporation and the previously submitted rent receipts appear to have been written by the same individual. The authenticity of the above-mentioned "RETURN TO WORK OR SCHOOL SLIP" is questioned as it appears to have been prepared by someone who is not familiar with medical terminology or the medical field. 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, 591-92 (BIA 1988). 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. *Id.*, 582, 591. In addition, the letter from Injectron Inc. carries no weight, as there is no documentary evidence, such as employee records or pay receipts, to substantiate the claim that the applicant was employed by Injectron Inc., "in the year 2001."

None of the documentation contained in the record or presented on appeal is sufficient in meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The applicant provided no additional credible documentation on appeal that would sufficiently establish her day-to-day living in the United States during the requisite timeframes and to lend substantial support to the minimal documentation previously submitted. The applicant has not met the continuous residence and continuous physical presence 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 for these reasons will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.