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**U.S. Citizenship
and Immigration
Services**

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **SEP 16 2005**

[WAC 02 201 54790]

IN RE:

Applicant:



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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 had failed to submit sufficient evidence to establish that she had continuously resided in the United States since February 13, 2001.

On appeal, counsel 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 alien 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 § 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.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, 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).

The record shows that the applicant filed her TPS application on June 3, 2002. In support of her application, the applicant submitted:

1. A statement dated May 12, 2002, from [REDACTED] indicating that the applicant has been living at [REDACTED] California, since the month of November 2000.
2. A statement dated May 18, 2002, from [REDACTED] indicating that the applicant is a self-employed babysitter, and that she has been taking care of her 2½ -year-old daughter since January 2001.

The director determined that the evidence furnished was insufficient to establish that the applicant had resided in the United States since February 13, 2001, and denied the application on June 7, 2004.

On appeal, counsel asserts that the applicant first applied for TPS with the help of another agency who did not provide sufficient evidence that the applicant has lived in the United States since February 13, 2001. He further asserts that the applicant has indeed "continuously resided in the United States for the entire period specified in the regulations;" however, the applicant has very little to prove her residency in the United States, and he is including declarations from several of her family members:

3. A statement dated July 6, 2004, from the applicant, indicating that she first arrived in the United States around July 2000, that she has been living with her sister, [REDACTED] and her family in San Mateo, and that she takes care of [REDACTED] granddaughter all day.

4. A statement dated July 6, 2004, from [REDACTED] the applicant's sister, indicating that the applicant arrived in the United States in July of 2000, that her granddaughter [REDACTED] who was born in December 1999, was only seven months old when the applicant arrived, and that [REDACTED] [the applicant] fell in love with [REDACTED] and from the moment she arrived, she became her primary caretaker."
5. Another statement from [REDACTED] dated July 2, 2004, indicating that the applicant is a self-employed babysitter, and that she has been taking care of her daughter, [REDACTED] since January 2001.
6. A statement dated June 30, 2004, from [REDACTED] indicating that the applicant "came to the United States at the end of the year 2000," and that they see each other often since the applicant takes care of his niece [REDACTED] since the year 2001.
7. A statement dated July 3, 2004, from [REDACTED] indicating that he has known the applicant since the year 2000 when she came to the United States, and that he used to give the applicant "a ride to the adult school she was attending at night for her [E]nglish classes."
8. A statement dated July 1, 2004, from [REDACTED] Associate Pastor, St. Matthew Catholic Church, indicating that the applicant "has been attending this Parish since November 2000 as a member not registered. I know this because other registered members of this community have known [REDACTED] [REDACTED] since the given date."

It is noted that the applicant indicated on her TPS application that she entered the United States on November 20, 2000. This claim was supported by [REDACTED] the applicant's sister (No. 1 above). However, on appeal, the applicant and her sister revised their claim of entry and stated that the applicant entered the United States on July 2000 (Nos. 3 and 4 above). It is further noted that [REDACTED] stated (No. 4 above) that the moment the applicant arrived (in July 2000), she became her granddaughter's (~~Grace~~) primary caretaker. However, [REDACTED] (No. 6 above) and [REDACTED] (Nos. 2 and 5 above) stated that the applicant has been taking care of her daughter (~~Grace~~) since January 2001.

The inconsistencies of the above statements raise questions of credibility. It is also noted that although [REDACTED] (No. 7 above) stated that he gave the applicant a ride to the adult school, it would seem appropriate, and to the applicant's advantage, for the applicant to submit documentary evidence to establish that she was in fact attending classes during the claimed period. Additionally, the statement from [REDACTED] (No. 8 above) 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)(v). Specifically, the pastor indicated the applicant is not a registered member of the parish, and admitted that the source of the information he was giving was "other members of his community." Additionally, the statement was not attested to or notarized.

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, in fact, 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 discrepancy in the evidence she provided. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided to establish the applicant's qualifying residence in the United States were not supported by any other corroborative evidence. The applicant claimed to have lived in the United States since July or November 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support her claim; however, no such evidence has been provided.

The applicant has failed to establish that she has met the criteria for continuous residence in the United States since February 13, 2001. 8 C.F.R. § 244.2(c). Additionally, the applicant has failed to establish that she has met the criteria for continuous physical presence in the United States since March 9, 2001. 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application 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.