



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

M1

FILE:

[REDACTED]
[SRC 02 088 52288]

Office: ATLANTA DISTRICT

Date:

AUG 01 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Atlanta District Office, 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 continuous residence and continuous physical presence in the United States.

On appeal, the applicant asserts her claim of eligibility for TPS.

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 program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. Subsequent extensions of the TPS designation have been granted with the latest extension valid until September 9, 2007, 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 applicant previously submitted the following documentation:

1. A photocopy of the applicant's El Salvadoran passport issued to her in El Salvador on July 30, 2001;
2. Copies of three pay stubs from the Exceptional Restaurant Company bearing the applicant's name as employee with a hire date of November 9, 2001; and,
3. Copies of the applicant's IRS Form W-2, Wage and Tax Statements from the Exceptional Restaurant Company for the 2001, 2002, and 2003 tax years.

The applicant was interviewed at the Atlantic District office on February 3, 2004. 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:

4. A letter from a restaurant general manager in which she stated that the applicant has worked for Taco Bell since February of 2001;
5. A copy of a hospital record from Grady Memorial Hospital bearing the applicant's name as patient, with a service date of May 17, 2002;

6. A copy of a patient appointment notice from the North Fulton Family Practice dated December 4, 2001, and bearing the applicant's name as the patient; and,
7. A photocopy of the applicant's Georgia Identification Card with an exam date of March 6, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on August 10, 2004. The director noted that the applicant appeared for her scheduled interview for TPS on February 3, 2004. The director also noted that the applicant submitted items 2 through 6 above as evidence of her continuous residence and continuous physical presence in the United States. The director further noted that the applicant initially claimed that she had been working at Burger King during the requisite time period, but in response to a request for evidence, she submitted a hand written letter from [REDACTED] claiming that the applicant worked at Taco Bell during that time period. The director noted that the applicant failed to submit any employment letter on letterhead or pay stubs to substantiate her claims.

On appeal, the applicant reasserts her claim of eligibility for TPS and submits the following documentation:

8. A color photocopy of the applicant's Georgia Driver's License with an exam date of March 12, 2004;
9. Copies of INS notice statements to the applicant with receipt dates from September 9, 2002 to September 24, 2003;
10. A copy of the applicant's IRS Form W-2, Wage and Tax Statement from L&L Management, Inc. for the 2001 tax year; and,
11. A letter from [REDACTED] of L&L Management, Inc. in which she states that the applicant was employed by the company from February 8, 2001 to February 23, 2001, as a crew member, and that her total earnings for 2001 were \$63.59.

The applicant also resubmits a copy of the 2001 IRS Form W-2, Wage and Tax Statement, from the Exceptional Restaurant Company.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, to January 22, 2002, the date of filing. Although the employment letters from Taco Bell (No. 4 above) and L&L Management, Inc. (No. 11 above) state that the respective companies employed the applicant since February of 2001, the applicant's El Salvadoran passport (No.1 above) indicates that she was issued the passport in El Salvador on July 30, 2001. 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.

In addition, the employment letters have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letters are not in

affidavit form nor are they printed on official company letterhead. Further, the letters do not provide the address where the applicant resided during the period of her employment, nor has the applicant submitted any corroborating evidence to substantiate her employment claim. The IRS, Form W-2, Wage and Tax Statements (Nos. 3 and 10 above) are not specific enough to serve as evidence of the applicant's eligibility for TPS, in that the AAO is unable to determine from the forms the exact dates of the applicant's employment during any given tax year.

All other evidence of the applicant's presence in the United States is dated subsequent to February 13, 2001 and March 9, 2001; and therefore, is insufficient to establish the applicant's continuous residence and continuous physical presence in the United States since the requisite time period.

As previously stated, it is noted that although the applicant states that she has been in the United States since December of 2000, her El Salvadoran passport was officially issued to her in El Salvador on July 30, 2001, thus precluding a favorable finding regarding her continuous residence and continuous physical presence in the United States.

The applicant has failed to establish that she has 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 TPS 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.