

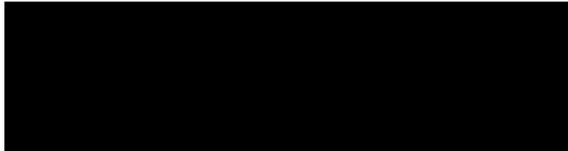


U.S. Citizenship
and Immigration
Services

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FILE:

[EAC 03 077 53736]

Office: Vermont Service Center

Date: **AUG 29 2007**

IN RE:

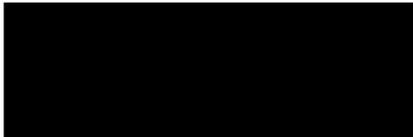
Applicant:



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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The case will be reopened and the appeal will again be dismissed.

The applicant claims to be a 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 she continuously resided in the United States since before February 13, 2001.

A subsequent appeal from the director's decision was dismissed on August 2, 2005, after the Director of the AAO also concluded that 1) the applicant had failed to establish that she continuously resided in the United States since before February 13, 2001; and 2) that the applicant had failed to establish she was eligible for late registration. On motion to reopen, counsel for the applicant asserts that each of the Chief's reasons for denial was not sufficient, and submits a corrective affidavit to change discrepancies noted by the director.

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. 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).

On motion counsel argues that the Chief was incorrect in assigning weight to evidence and provides two case citations which concern a review of evidence without referring to the regulations which actually govern the analysis of evidence. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. 244.9(a)(4)(b). First, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Second, it is not sufficient for counsel to make numerous conclusory assertions without providing evidence to support such claims. Finally, the burden of proof is upon the applicant to establish that he or she meets the above requirements. 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 cases cited by counsel are irrelevant to the issues of this proceeding. The fact that the applicant admits she did not arrive in the country until February 25, 2001, establishes that she is statutorily ineligible for TPS.

Counsel dismisses the Chief's analysis, presuming that CIS should simply disregard inconsistent evidence in the record and accept the applicant's inconsistent testimony which is supported only by secondary evidence. The AAO is not persuaded by counsel's assertions, primarily because counsel has failed to provide any evidence in support of his assertions. It is the applicant's burden to demonstrate eligibility, and in this case the record lacks relevant, consistent evidence corroborating the applicant's claims and counsel's assertions are without merit.

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. 8 C.F.R. 244.9(a)(4)(b). 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).

As a matter of precedent, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). If numerous inconsistencies are noted in a petition, simply attesting that the evidentiary inconsistencies noted in a decision were due to scrivener's error is not sufficient to rehabilitate the credibility of that evidence. In this case the evidence in the record contradicts the applicant's initial assertions, and presumes that that AAO should disregard the findings of prior immigration proceedings based on inconsistent and generic secondary evidence. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case the applicant has not submitted any evidence to establish the facts are as they assert they are, and instead relies on a single corrective affidavit. The AAO finds the counsel's assertions are not persuasive, and notes that the submitted corrective affidavit is not sufficient to rehabilitate any impeached evidence and testimony, and in any does not constitute evidence. 8 C.F.R. § 244.9(b). Moreover, the applicant's corrective affidavit states that her actual date of entry was February 25, 2001. Even in a light most favorable to the applicant, this statement would render her statutorily ineligible for TPS since she could not establish her continuous residence in the United States since February 13, 2001. 8 C.F.R. § 244.2(e). Consequently the director's decision on this issue 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 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.

ORDER: The appeal is dismissed.