



U.S. Citizenship
and Immigration
Services

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FILE:



[EAC 02 244 50790]

Office: Vermont Service Center

Date: **MAY 25 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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, remanded by the AAO, and denied again by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will 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 he had: 1) continuously resided in the United States since February 13, 2001; and, 2) been continuously physically present in the United States since March 9, 2001.

On appeal the applicant reasserts her eligibility and submits additional documentation in support.

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 July 15, 2002, the applicant filed this Form I-821 for Temporary Protected Status. In support of establishing residence during the required period the applicant submitted the following evidence:

1. Letter, dated July 9, 2002, signed by [REDACTED] attesting that she has known the applicant since December 2000, and that she has been present in the United States since that time.
2. Letter, dated July 9, 2002, signed by [REDACTED] attesting that he has known the applicant since December 2000, and that she has been present in the United States since that time.

On July 14, 2005, 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 as well as her date of entry into the United States. On September 5, 2003, the applicant, in response, stated that she had sent all the evidence she had, and provided the following documentation:

3. Letter, dated August 29, 2003, signed by [REDACTED], attesting that the applicant has been living in his house and renting a room since December 19, 2000.
4. Letter, dated August 29, 2003, signed by [REDACTED] attesting that the applicant has been working for her as a babysitter since December 19, 2000.
5. Form 1040 U.S. individual Income Tax and W-2 Wage and Tax Statements for 2004.
6. Form 1040 U.S. individual Income Tax and W-2 Wage and Tax Statements for 2003.
7. Form 1040 U.S. individual Income Tax for the years 200, 2001, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on February 15, 2006.

On appeal, the applicant reasserts her claim and submits the following documentation:

8. Copy of a medical record dated September 9, 2002, from the State of Maryland Laboratories Administration bearing the applicant's name;
9. Copy of a medical record dated August 28, 2002, from Health South, for the applicant;
10. Copy of a medical record from Prince George's County Health Department, dated December 27, 2002, for the applicant.
11. Letter, dated March 15, 2006, signed by [REDACTED], attesting that the applicant has worked with her babysitting since February 2001
12. Letter, dated March 10, 2006, signed by [REDACTED] attesting that she has known the applicant since 2000 as a friend, and that she has been in the United States since her arrival in 2000.
13. Letter, dated March 13, 2006, signed by [REDACTED] attesting that she has personally known the applicant since her arrival in 2000.
14. Two copies of Western Union receipts dated for "03/01" and August 21, 2003.

The evidence submitted on appeal is highly suspect, as the applicant has twice been requested by the director specifically to submit evidence of her residence and presence over the four years this application has been pending, and now submits this new evidence on appeal. Further, the applicant stated in response to the director's NOID that she had provided all of the evidence she had.

The letters provided by [REDACTED] and [REDACTED] in items one and two above are different than those provided subsequently by each of the affiants in items three and four, and raise doubts about their authenticity. Further, [REDACTED] claims in August 2003, that the applicant had worked for her as a babysitter since 2000, despite not mentioning this in her former letter, this is also not supported by the tax documentation provided by the applicant herself. The returns for 2002 and 2003 make no mention of any such income, and the W-2s provided for 2003 reconcile the entire amount of taxes paid by the applicant. 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 letters which were not submitted until appeal are not sufficient to carry the applicant's burden. The letters provided are not supported by any other corroborative evidence, and do not provide relevant, specific details about the applicant's presence. While 8 C.F.R. § 244.9(a)(2)(vi) states that additional documents such as letters "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since some time in 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these letters, however, no such evidence has been provided. In addition the letters are suspect because the applicant has twice been asked to produce documentation, and then on appeal submits letters claiming to have known the applicant since before her original filing.

The tax returns submitted by the applicant are not certified, and appear to be copies provided by the document preparer, not the IRS. The tax returns for 2000, 2001, and 2002, are not accompanied by W-2 forms, and do not appear to be contemporaneous documentation. In addition, tax forms are a yearly summary of finances, and are not inherently probative of continuous presence and residence during the entire twelve month period they cover.

In 2004 the applicant only reported \$1,796 in income, in 2003 the applicant only reported \$5,338 in income, and the amounts reported for 2001 and 2002 are exactly the same, a somewhat suspicious characteristic, for the amount of \$6,691. Even when viewed in a light most favorable to the applicant this tax documentation indicates that the applicant's employment was sparse at best, and does not support that the applicant has been present and resident in the United States during the required period. Without any contemporaneous documentation to support the tax forms for 2000, 2001, and 2002, they are not credibly probative on the applicant's presence during those years.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the residence and physical presence requirements 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.

The applicant has not submitted any evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the period from during the required period. She has, thereby, 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 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.

ORDER: The appeal is dismissed.

