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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[WAC 05 154 70341]

Office: Vermont Service Center

Date: **NOV 03 2008**

IN RE:

Applicant:

APPLICATION:

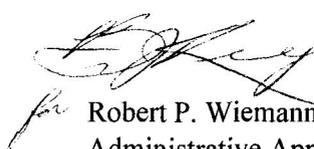
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 Vermont Service Center. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
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 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 record reveals that the applicant filed a TPS application on February 4, 2005. On March 9, 2006, the Service notified the applicant of its intent to deny the applicant's TPS application. The purpose of the notice was for the applicant to submit evidence establishing her eligibility for late registration, her date of entry into the United States, her nationality/identity, and her continuous residence and continuous physical presence in the United States during the requisite periods. On May 4, 2006, the director denied that application after she determined that the applicant failed to provide evidence of her nationality and identity, and that she also failed to establish her eligibility for late registration. The applicant submitted a subsequent appeal from the director's decision on June 1, 2006. The AAO remanded that appeal to the director on December 7, 2007, after the Chief of the AAO determined that the applicant had provided sufficient evidence of her nationality and identity and established that she was eligible for late registration for TPS¹. The AAO Chief, however, found that the applicant had not provided sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the required time periods.

On March 12, 2008, and April 15, 2008, the director issued new notice of his intent to deny the applicant's TPS application. The notice requested that the applicant submit her date of entry into the United States and evidence establishing her continuous residence and continuous physical presence in the United States during the qualifying periods. The director, however, denied the applicant's TPS application on July 8, 2008, after she determined that the applicant failed to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. The applicant has now submitted an appeal.

On appeal, the applicant asks CIS to reopen her case and submit additional 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 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;

¹ The AAO incorrectly stated the applicant's date of birth as December 15, 1998. Evidence submitted by the applicant establishes that she was born in El Salvador on December 15, 1986.

- (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. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until March 9, 2009, 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).

In response to the director's request for additional evidence, the applicant provided the following documentation:

1. Copies of her Salvadoran passports issued in San Salvador on August 16, 2002, and in Georgia on March 29, 2006;
2. A copy of her father's EAD card and his driver's license issued in the state of Georgia;
3. A copy of High School Graduation Requirements;
4. A copy of a School Progress Report dated October of 2002;
5. A copy of a report card from Campbell High School;
6. A copy of a school receipt of a Coverage Plans Benefit;
7. A copy of school courses and graduation requirements for the 2003 to 2004 spring semester;
8. A copy of a Progress Grade report from Osborne High School dated May 25, 2004;
9. A copy of a Georgia Standard Student Transcript dated October 22, 2004;
10. A letter dated March 23, 2008 from [REDACTED], Pastor, and [REDACTED] Administrative Aide, both of Iglesia Evangelica Apostoles y Profetas, attesting that the applicant has been a member of the congregation since February 10, 2001;
11. Copies of Certificate of Immunization issued on August 4, 2003, and September 3, 2003;
12. A doctor's note stating that the applicant was seen in that office on March 21, 2001;
13. A letter from [REDACTED] stating that she has known the applicant since February 9, 2001;
14. A letter dated March 23, 2006, from [REDACTED] attesting that he has known the applicant since February 7, 2001;
15. A letter dated March 21, 2008, from [REDACTED] stating that she has known the applicant since 2001;
16. Statements from Marietta Community Health Center dated March 4, 2003, August 4, 2003, and September 3, 2003;
17. A letter dated March 19, 2008, from [REDACTED] stating that she has known the applicant since 2001;
18. A copy of an Emergency Information Card from Cobb County Public Schools, Campbell High School;
19. A letter dated March 31, 2006, from [REDACTED], Pastor of Iglesia Evangelica Apostoles y Profetas, attesting that the applicant has been a member of his congregation since February of 2001;
20. A letter dated July 30, 2008, from [REDACTED] stating that she has known the applicant since 2001;
21. A copy of a school status report dated March 19, 2003;
22. A copy of a Grade Check report dated March 19, 2004; and,
23. A copy of a Cobb County School System Withdrawal Form dated October 22, 2004.

The documents listed at numbers 3, 4, 5, 7 and 8 above bear signs of having been altered. As an example, the documents clearly bear two different styles of writing, with the name of the applicant, the date, and the grade having been written in one style, and the body of the document having been written in a different style,

distinguishable by the smaller font and in all capital letters for the name, date, and grade of the applicant while the body of the document is in a normal font. The AAO is not persuaded that this evidence is sufficiently credible (authentic) to warrant consideration. Even in a light most favorable to the applicant, these documents are not probative of an applicant's continuous residence and physical presence during the required period. Therefore, these documents are rejected as authentic evidence. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

It is noted that on his Form I-821, Application for Temporary Protected Status, filed and received by CIS on September 5, 2002, under receipt number SRC 02 261 53824, the applicant's father indicated that the applicant resided in San Salvador, El Salvador. In addition, the applicant submitted her Salvadoran passport issued in San Salvador on August 16, 2002 although she indicated on her TPS application that she entered the United States on February 4, 2001. 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 record does not contain evidence that explains the inconsistency noted above, and the inconsistency is not addressed by the applicant.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the requisite periods. 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.

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.