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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE:

APR 26 2013

Office: VERMONT SERVICE CENTER

FILE:

IN RE:

Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel submits additional documents in an attempt to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods. Counsel requests that the letter from Pastor [REDACTED] be given significant weight.

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 Secretary 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.

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.

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.

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 September 9, 2013, 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 U.S. Citizenship and Immigration Services (USCIS). 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 AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant filed her initial TPS application () on August 31, 2006¹. On February 21, 2007, the director denied the application as the applicant had failed to credibly establish continuous residence and continuous physical presence during the requisite period. The director determined that the affiants' affidavits were inconsistent and contradictory and appeared to have been altered. No appeal was filed from the denial of that application.

The applicant filed the current application on March 21, 2012. Along with this application, the applicant submitted:

- Copies of her son's immunization record and his birth certificate who was born on in the state of Arkansas.
- A rent receipt dated May 1, 2005 addressed to the applicant's spouse.
- Documents in the Spanish language without the required English translations.
- An unsigned statement from an affiant, indicating the applicant took care of her children in January 2001, February 20, 2002 and March 28, 2003.
- A photocopied letter in the Spanish language with English translation from of in Springdale, Arkansas, who indicated that he has known the applicant since "she came from the country of El Salvador in January of the year 2000". The pastor indicated that the applicant has been a member of its church since that date.
- A statement dated February 26, 2012, from of Lowell, Arkansas, who indicated that he has known the applicant for about six years. The affiant attested to the applicant's moral character.
- An affidavit from of Springdale, Arkansas, who indicated that she has known the applicant since 2000. The affiant attested to the applicant's moral character and indicated that on several occasions she and the applicant have met in church.

¹ The applicant met the eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2)(iv).

- A letter dated February 27, 2012, from [REDACTED], a representative at [REDACTED] in Springdale, Arkansas, regarding the applicant's absence on February 12, 2011 as she was a patient at the clinic.
- A photocopied statement dated February 27, 2012, from [REDACTED] who indicated that the applicant resided at her property, [REDACTED] Springdale, Arkansas in 2005 and 2006.
- A photocopied letter dated February 27, 2012, from [REDACTED] of [REDACTED] [REDACTED] who indicated that the applicant has been residing at [REDACTED] since April 28, 2010.
- A [REDACTED] card and medical billing statements from Arkansas Department of Health dated December 1, 2008 and May 13, 2009.

On July 23, 2012, the director denied the application because the applicant had not provided any new and compelling evidence that overcame the reasons for denying the initial TPS application.

On appeal, counsel provides copies of documents that were previously submitted, the original letters of [REDACTED] and [REDACTED] along with the following statements in the Spanish language with English translations:

- [REDACTED] of Springdale, Arkansas, who indicates that she met the applicant at church in February 2000 and again in the state of Arkansas where she met some of the applicant's family.
- [REDACTED] of Springdale, Arkansas, who indicates that since 2000 "we go the [REDACTED] in Springdale Arkansas," that the applicant took care of her children from 2000 to 2009, and that the applicant worked with her in 2001.
- [REDACTED] of Rogers, Arkansas, who indicates that in 2000, she was introduced to the applicant by her father at a baby shower. The affiant indicates that since that time she has seen the applicant at church every Sunday.
- [REDACTED] of Springdale, Arkansas, who indicates that he met the applicant at [REDACTED] in January 2001. The affiant indicates that since that time he has seen the applicant at church every Sunday.
- [REDACTED] and [REDACTED] who indicate that they have known the applicant since 2004. The affiants indicate that the applicant and her spouse rented a duplex from them at [REDACTED] Springdale, Arkansas.

Counsel also provides:

- Affidavits from [REDACTED] of Springdale, Arkansas, and [REDACTED] of Lowell, Arkansas, who indicates that they have known the applicant since 2003 and January 2007, respectively. The affiants attested to the applicant's moral character.

- A database printout from the Springdale School District listing the applicant as a guardian of her son who is/was in the 11th grade. The printout indicates the son's enrollment date as November 1, 2004 in the 2nd grade.
- A copy of the immunization record of her son born [REDACTED]
- Medical documents dated in May 2005, April 2006, May 2007, May 2008, July 2008 and May 2009.
- Uncertified income tax documents 1040A for 2005, 2006, 2007, 2008 and 2010.
- A letter dated January 19, 2010 from the Internal Revenue Service regarding the tax periods ending 2007 and 2008.
- A copy of her identification card issued on July 3, 2012 from the state of Arkansas.

The record contains sufficient evidence to establish that the applicant has been residing and has been physically present in the United States since 2004. The AAO, however, does not view the evidence submitted throughout this and prior TPS application proceedings as substantive to support a finding that the applicant has continuously resided since February 13, 2001 and has been continuously physically present since March 9, 2001 in the United States. The applicant has provided affidavits and statements from affiants that are contradictory and raise questions to their authenticity.

USCIS records reflect that the applicant's spouse, [REDACTED] on his initial TPS application filed on November 1, 2001 and on his re-registration applications filed October 8, 2002 and August 29, 2003 indicated at Part 3 that the applicant was residing in Masahuat, Santa Ana, El Salvador. The applicant's spouse, in affixing his signature on each TPS application certified that the information he provided was *true* and *correct*. Therefore, the reliability of the applicant's affidavits and statements from the affiants attesting to the applicant's residence and physical presence prior to 2004 have no probative value or evidentiary weight.

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).

When inconsistent and contradicting information has been found, the submission of affidavits alone will not be sufficient to support the applicant's claim of continuous residence and continuous physical presence during the periods in question. The applicant has, thereby, failed to credibly 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 on these grounds 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

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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.