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U.S. Citizenship
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APR 27 2007

FILE:

[REDACTED]

[WAC 05 218 78004]

OFFICE: California Service Center

DATE:

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, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is 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 on the grounds that the applicant failed to establish that she met the continuous residence and continuous physical presence requirements for TPS applicants from El Salvador.

On appeal the applicant asserts that she entered the United States before February 13, 2001, and has been continuously resident and physically present in the country since then. The applicant indicates that she has already submitted all available evidence of her residence and physical presence in the United States.

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.

El Salvadoran nationals applying for TPS 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 initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002.

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). See 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. See 8 C.F.R. § 244.9(b).

The record shows that the applicant filed her Form I-821, Application for Temporary Protected Status, on May 6, 2005. On May 9, 2006, the director issued a Notice of Intent to Deny (NOID), advising the applicant that the initial registration for TPS applicants from El Salvador ran from March 9, 2001 to September 9, 2002, and requesting the applicant to submit evidence that she was eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2), as well as evidence that she had been continuously resident in the United States since February 9, 2001, and continuously physically present in the United States since March 9, 2001, as required for TPS applicants from El Salvador.

The applicant responded to the NOID by stating that she qualified for late TPS registration as the wife of a TPS beneficiary, [REDACTED], and submitting photocopies of her marriage certificate (with a certified English translation) and an Employment Authorization Card issued by CIS to her husband. CIS records confirm that [REDACTED] filed a TPS application during the initial registration period, was granted TPS in April 2002, and has regularly extended his TPS since then, making the applicant eligible to apply for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv). As evidence of her qualifying residence and physical presence in the United States the applicant – who claims to have entered the country without inspection on

February 1, 2001 – submitted a letter from her church pastor who claims that he has known the applicant since she and her husband began attending his church around February 15, 2001, as well as a letter from a restaurant manager who states that he has employed the applicant's husband a long time and that he has known the applicant since early February 2001.

On August 7, 2006, the director denied the application on the grounds that the evidence submitted by the applicant in response to the NOID had failed to establish her continuous residence and continuous physical presence in the United States since the dates applicable for TPS applicants from El Salvador.

On appeal the applicant reiterates her claim that she entered the United States before February 13, 2001, and has been continuously resident and physically present in the United States since then. The applicant indicates that her previously submitted documentation is all she has. No additional documentation is submitted with the appeal.

The previously submitted materials include two letters from acquaintances of the applicant who claim to have known her since February 2001. One is from the pastor from a church in Baltimore, Maryland, dated May 21, 2006, who states that the applicant and her husband began attending church services around February 15, 2001, and have remained members of the congregation up to the present time. The letter provides no information about where the applicant was living during and after February 2001, except to note the applicant's current address at the time she registered for TPS (in 2005). Nor does the letter provide any further details about the applicant's family over the years, the extent of her activities in the church (aside from attending Sunday services), whether she has been employed, or other activities in which she has been engaged from February 2001 onward. The other letter in the record, dated May 23, 2006, is from an individual, [REDACTED] who identifies himself as the operation manager of Faid Development, L.L.C., doing business as Afgan Kabor & Café, in Baltimore, Maryland, who claims to have employed the applicant's husband for many years. According to the [REDACTED] he was introduced to the applicant in early February 2001 and has maintained social contact, including visits to her home, over the years. Letters from acquaintances are not, by themselves, persuasive evidence of residence or physical presence in the United States. If the applicant has lived in the United States since February 2001, as she claims, it is reasonable to expect that she would have more contemporaneous documentation. The applicant has not submitted any other types of documentation enumerated in the NOID, and in 8 C.F.R. § 244.9(a)(2), to demonstrate her continuous residence and physical presence in the United States since early 2001.

Furthermore, the AAO notes that the applicant's husband in his initial TPS application filed in March 2001, as well as in his first re-registration application filed in September 2002, identified his wife's address as San Marcos, El Salvador. The applicant's husband did not identify his wife's address as his own – in Baltimore, Maryland – until he filed his second re-registration application in September 2003. It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). The applicant has not explained the inconsistencies between the letters from acquaintances discussed above and her husband's previous TPS applications with respect to where she lived prior to 2003. Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. *See id.*

The AAO concurs with the director, therefore, that the applicant has failed to establish that she has been continuously physically present in the United States since March 9, 2001, and has continuously resided in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's decision will be affirmed on these grounds.

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 that burden.

ORDER: The appeal is dismissed.