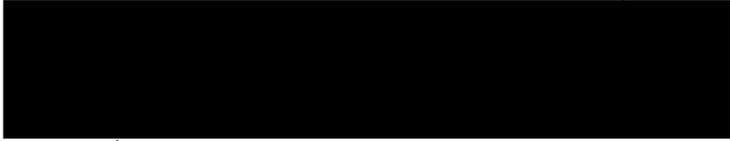




U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: OCT 30 2007

[consolidated herein]

[EAC 02 260 51597]

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, 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 director denied the application because: (1) the Application for Waiver of Grounds of Excludability (Form I-601) had been denied; and (2) the applicant had failed to establish that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, counsel submits a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act; of a foreign 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 § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 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.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, 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).

The first issue in this proceeding is whether the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii).

Section 212(a)(6)(C)(ii) of the Act states, in pertinent part:

Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

Section 244(c)(2)(A)(ii) of the Act states, in pertinent part:

[E]xcept as provided in clause (iii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest...

The record of proceeding shows that on April 8, 2000, the applicant attempted entry into the United States at Brownsville, Texas. She stated to the inspecting officer that she was born in Puerto Rico. The applicant was referred to the Service secondary inspection where it was revealed by Service records that the applicant was, in fact, born in El Salvador. The applicant, therefore, admitted in a sworn statement signed by the applicant on April 8, 2000, that she claimed to be a U.S. citizen because she did not have in her possession her Employment Authorization Card. A Form I-860, Notice and Order of Expedited Removal, was issued after it was determined that the applicant was inadmissible to the United States, pursuant to section 212(a)(6)(C)(ii) of the Act, for falsely

representing herself to be a citizen of the United States for immigration purposes. On May 2, 2002, the applicant was subsequently paroled into the United States until November 1, 2000, pending an asylum¹ hearing before an Immigration Judge (IJ). In removal proceedings held on July 23, 2001, neither the applicant nor her representative appeared for the hearing; therefore, the IJ administratively closed removal proceedings. On September 27, 2004, the New York Asylum Office Director denied the asylum application after determining that the applicant had abandoned her application based on her failure to appear for a scheduled interview on August 23, 2004.

In a notice of intent to deny the TPS application dated June 11, 2003, the applicant was advised that CIS records indicate she is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act, and unless she filed an Application for Waiver of Ground of Excludability, Form I-601, her TPS application would be denied. The applicant responded to the director's notice by filing a Form I-601 on July 2, 2003. On September 10, 2003, the applicant was requested to "submit a statement explaining why the Service should approve a waiver in your behalf since you were found inadmissible for falsely claiming to be United States Citizen. Please submit any documentation that substantiates your claims." On April 29, 2004, the director denied the waiver application after determining that the applicant had abandoned her application by failing to respond to a request for evidence. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The director denied the TPS application on February 18, 2005, after determining that the applicant was ineligible for TPS because the Form I-601 waiver application was denied on April 29, 2004.

On appeal, counsel asserts that the applicant has been residing in the United States since 1988 and is an "ABC class member." He states that the applicant is requesting that her TPS application and the I-601 waiver be reconsidered due to humanitarian grounds. Counsel, however, failed to submit any evidence to establish that the applicant is eligible for a waiver of grounds of inadmissibility based on humanitarian grounds; nor did the applicant submit a statement explaining why a waiver on her behalf should be approved, as had been requested by the director on September 10, 2003.

Accordingly, the applicant is ineligible for TPS because she is inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act. Consequently, the director's decision to deny the TPS application will be affirmed.

The next issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001; to the date of filing the TPS application.

The record shows that the applicant filed her initial TPS application on August 8, 2002. In a notice of intent to deny dated July 11, 2003, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted:

1. A copy of a State of New York Learner Permit issued on May 29, 2001.
2. Copies of vehicle registration dated July 20, 2001, and insurance policy and insurance identification card issued by Eagle Insurance Co. effective July 20, 2001.

¹ Form I-589, Request for Asylum in the United States, was filed on January 30, 1995.

3. Copies of correspondence from AIU Insurance Company dated May 8, 2002 and May 30, 2002; and a statement dated May 20, 2003.
4. Copies of earnings statements from Cleaning Systems Management Corp. dated June 29, 2000 and February 24, 2001 under the applicant's name; and one earning statement dated July 19, 2001 under the name of "[REDACTED]"

The earnings statements (No. 4 above) appear to have been altered and are considered not credible. The applicant could have submitted a letter from her employer as corroborating evidence of her employment with this company. 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 sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. The documents noted above are not considered credible and greatly reduce the credibility of other documents contained in the record of proceeding.

The remaining evidence (Nos. 1, 2 and 3 above) only establishes the applicant's physical presence since May 2001. No documentary evidence was furnished to establish continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001. The applicant claimed to have lived in the United States since 1988. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support her claim; however, no such evidence has been provided.

Accordingly, the applicant has failed to establish that she has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application on this ground will also be affirmed.

It is noted that a Warrant of Deportation, Form I-205, was issued on March 2, 1989, in Harlingen, Texas, based on an order of removal by an IJ on February 27, 1989, and that the applicant was subsequently removed from the United States on March 1, 2000.

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 temporary protected status 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.