

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536

**PUBLIC COPY**



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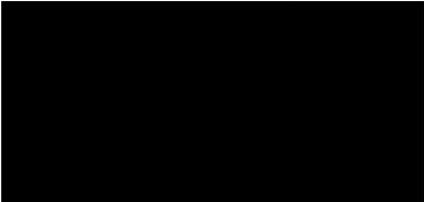
OFFICE: Nebraska Service Center

DATE:

**DEC 03 2003**

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: 

*Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy*

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Cindy M. Gomez for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Nebraska Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted. The previous decision of the AAO will be affirmed.

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. 1254a.

The director denied the application after determining that the applicant had failed to establish continuous residence in the United States since February 13, 2001. The AAO upheld the decision of the director and dismissed the appeal.

On motion, counsel states that the AAO did not address one of the affidavits the applicant submitted on appeal. Counsel submits another copy of the affidavit as well as four additional affidavits from individuals who state that the applicant resided with them in the United States. Counsel contends that the additional evidence establishes the applicant's eligibility for TPS.

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
- (e) provided under section 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f) (2) of this section.

Continuously physically present 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.

Continuously resided 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 entry on or prior to February 13, 2001; 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. A subsequent extension of the TPS designation has been granted by the Secretary of Homeland Security, with validity until March 9, 2005, 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 the director. 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 10, 2001, the applicant was provided the opportunity to submit evidence establishing residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant was also requested to submit evidence of her date of entry prior to February 13, 2001. The applicant was informed at that time of the type of documentation that would be acceptable to prove that she had met the eligibility requirements for TPS. The applicant, in response, only provided her identification card and a letter from Angelia Cruz who claimed to have rented a room to the applicant from January through November 2000. The director determined that the applicant had failed to submit sufficient evidence of her date of entry, physical presence, and residence in the United States during the required period and denied the application.

On appeal, counsel asserted that the applicant qualifies for TPS because she entered the United States prior to February 13, 2001 and has continuously resided in the United States since March 9, 2001. Counsel submitted affidavits from Ana Liliano Romero; Saul R. Flores; Nelson Medando Menlos; and Paul and Sheila Espinoza.

The AAO determined that the affidavits were not sufficient to establish residence in the United States because none of the affidavits indicated the address where the applicant was residing.

In addition, the AAO noted that the applicant had not submitted any evidence of employment or money order receipts to support her claim of residence in the United States.

On motion, counsel states that the AAO failed to address one of the affidavits submitted on appeal. He submits a copy of the affidavit as well as the following evidence:

- (1) An affidavit dated March 12, 2002 from [REDACTED] who claims the applicant lived with him and his wife, [REDACTED] at [REDACTED] Saint Paul, Minnesota, from November 2000 to December 2001. The affiant states the applicant helped to care for his young daughter, and she received rent and assistance with other expenses from her brother.
- (2) An affidavit dated March 12, 2002 from [REDACTED] who claims the applicant lived with her and her husband, [REDACTED]

[REDACTED] at [REDACTED] Saint Paul, Minnesota, from November 2000 to December 2001. The affiant states the applicant helped to care for her young daughter, and she received rent and assistance with other expenses from her brother.

- (3) An affidavit dated March 18, 2002, from [REDACTED] who identifies himself as the applicant's boyfriend. The affiant states he met the applicant in July 2001. He states that she resided at [REDACTED] Saint Paul, Minnesota, from that time to December 2001, and that she did not have a job.
- (4) An affidavit dated March 20, 2002, from [REDACTED] the applicant's brother, who states that he helped the applicant with rent and other needs while she resided at [REDACTED] Saint Paul, Minnesota, from November 2000 to December 2001.

Counsel states that the AAO's decision failed to consider an affidavit from Angelia Cruz and Deborah Mitchell. Counsel submits a copy of an August 16, 2001 affidavit from Angelia Cruz, Post Office Box 21355, Columbia Heights, Minnesota. The document was notarized by Deborah Mitchell, a notary public in Minnesota. Ms. Cruz states in the affidavit that she rented a room at [REDACTED] (city and state not specifically stated), to the applicant from January 2000 until November 2000. While Ms. Cruz' affidavit was listed with other evidence submitted by the applicant, the contents of her affidavit were not specifically addressed by the AAO. However, the AAO considered all of the evidence submitted and found it did not support the applicant's claim. The March 4, 2002 decision stated:

It is logical to conclude that the applicant would have been working during this time in order to have paid the rent. However, no evidence of employment or money order receipts have been provided.

The applicant has not submitted any documentary evidence for the period she claims to have resided in the United States. The affidavits from the applicant's friends and relatives, by themselves, do not substantiate clear and convincing evidence of date of entry, physical presence, or of continuous residence in the United States.

The applicant has not submitted sufficient evidence to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the AAO director's decision on appeal will be affirmed.

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 motion is dismissed. The previous decision of the AAO is affirmed.