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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

[REDACTED]

FILE: [REDACTED]
WAC 01 189 50537

Office: California Service Center

Date:

DEC 16 2003

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:

[REDACTED]

PUBLIC COPY

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 the 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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

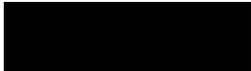
The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

The director determined that the applicant failed to submit sufficient evidence to establish: (1) her identity with a designated foreign state; (2) that she has continuously resided in the United States since February 13, 2001, and (3) has been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel states that the applicant submitted sufficient documentation to establish that she is eligible for TPS. She asserts that the director erred in not considering the information that the applicant has provided, including her birth certificate, a 1994 driver's license, and documentation from 1998 to 2002. Counsel submits additional documents.

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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and

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- (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 used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since February 13, 2001. 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 used in 8 C.F.R. § 244.1 means actual physical presence in the United States for the entire period specified in the regulations and since March 9, 2001. 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 record reflects that the applicant filed her TPS application on April 16, 2001. The applicant was requested on October 4, 2002, to submit: (1) a copy the biographical pages of her passport (if she has one), a copy of her national identification card (Cedula), and a copy of her latest California driver's license or any photo identification card; (2) evidence to show that she has continuously resided in the United States since February 13, 2001; and (3) evidence that she has been continuously physically present since March 9, 2001. The director listed the examples of acceptable evidence she may submit to establish eligibility. Because the applicant, in response, provided insufficient evidence, the director denied the application.

On appeal, counsel resubmits photocopies of the applicant's 1999 W-2 Wage and Tax Statement and earning statements for February 20, 1998, July 5, 1998, and September 27, 1998. These documents were addressed by the director in his decision and determined to be insufficient to establish residence and physical presence since February 13, 2001. Counsel also submits a copy of the applicant's Arizona Identification Card issued on January 12, 2002. The applicant, however, failed to submit a copy of a national identity document from her country of origin bearing a photo and/or fingerprint, or a copy of her passport.

Counsel submits letters from Dolores Payan, Rev. David Sanfilippo, and Jonel R. Lara. The undated, hand-written note from Ms. Payan states that she has known the applicant for four years. While Ms. Payan indicates that the applicant has been a friend and neighbor for four years, she fails to specifically state that the applicant has resided in the United States for the requisite period. Furthermore, the statement is not notarized and Ms. Payan does not list an address. As a result, the note is of little or no probative value.

The letter from Rev. Sanfilippo indicates that the applicant has been a parishioner since September 2001 when she registered her son for religious classes. He also claims that the applicant has lived in the parish since before February 2001. Rev. Sanfilippo, however, fails to show inclusive dates of the applicant's membership in the parish; state the address where the applicant resided during the membership period; establish how he knows the

applicant; and establish the origin of the information being attested. See 8 C.F.R. 244.9(A)(2)(V).

The statement from Jonel Lara lists the attendance of Eduardo Osegueda at the John F. Kennedy School in Phoenix, Arizona, from February 13, 2001 to March 19, 2001. The applicant is listed as Eduardo's guardian. It is noted that Jonel Lara signed the statement as a "School Personnel," and it does not bear a school district seal. Moreover, the statement shows that the individual was enrolled for a little more than a month. This statement does not establish the applicant's continuous residence or continuous physical presence in the United States during the requisite period.

The applicant has failed to establish that she met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c).

The burden of proof is upon the applicant to establish that 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.