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Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE [REDACTED]
LIN 01 197 51346

Office: Nebraska Service Center

Date: JAN 22 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

IN BEHALF OF APPLICANT: Self-represented

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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 Associate Commissioner for Examinations. A motion to reopen, filed by the applicant, was granted by the director and he again denied the application. The applicant appealed the director's decision on the motion, and is now before the Associate Commissioner on appeal. The director's second decision will be withdrawn because he lacks jurisdiction to make that decision on the motion, pursuant to 8 C.F.R. 103.5(a)(1)(ii). The appeal will be accepted as a motion to reopen the previous decision of the Associate Commissioner. The previous decision of the Associate Commissioner will be affirmed.

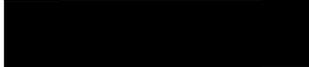
The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a.

The director denied the application after determining that the applicant had failed to establish that she had: (1) continuously resided in the United States since February 13, 2001; and (2) been continuously physically present in the United States since March 9, 2001.

The Associate Commissioner reviewed the evidence of record, including the two affidavits furnished on appeal, and determined that the evidence was insufficient to establish that the applicant met the continuous residence and the continuous physical presence requirements. He, therefore, concurred with the director's conclusion and dismissed the appeal on March 28, 2002.

In a motion to reopen, filed on April 12, 2002, the applicant furnished a copy of her discharge instructions from a hospital dated January 26, 2001; an envelope, addressed to the applicant, postmarked December 28, 2000; and a copy of her 1999 tax return. This evidence, however, is insufficient to establish that the applicant continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001.

The applicant again filed a motion to reopen (appeal) on September 3, 2002. She submits a copy of a letter from the U.S. Department of State, dated February 26, 2001, advising her of the new "V" nonimmigrant visa, and further advising her that if she is in the United States, to contact the U.S. Immigration and Naturalization Service, and that if she is outside the United States, she must apply at selected U.S. Embassies or Consulates. This letter, however, is insufficient to establish that the petitioner was in fact in the United States on February 26, 2001. It is not unreasonable to assume that documentation would be available for



the length of time the applicant claims to have resided in the United States.

Accordingly, the previous decision of the Associate Commissioner will be affirmed.

ORDER: The decision of the Associate Commissioner dated March 28, 2002, is affirmed.