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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: SEP 16 2004

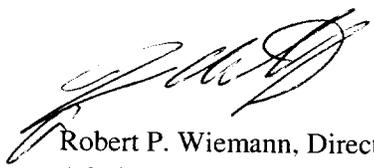
IN RE: Applicant: [Redacted]

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]

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish her eligibility for Temporary Protected Status (TPS). Specifically, the director found that the applicant had failed to establish that she is a national of El Salvador (or in the case of an alien having no nationality, is a person who last habitually resided in El Salvador) pursuant to section 244(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On appeal, counsel for the applicant asserts that sufficient evidence has been submitted to establish that the applicant was physically present in the United States since November 30, 2000.

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 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
- (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 conditions described in paragraph (f)(2) of this section.

On March 9, 2001, the Attorney General designated El Salvador (66 FR 14214) for TPS. Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The applicant filed her initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on July 31, 2001. The applicant indicated on her Form I-821 that she is a citizen of El Salvador.

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 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).

On August 29, 2002, the director requested the applicant to submit evidence establishing that she is a citizen or national of El Salvador. The applicant was also requested to submit evidence establishing her continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant failed to respond the director's request.

On March 31, 2003, the applicant was again requested to submit evidence establishing that she is a citizen or national of El Salvador. She was also again requested to submit evidence establishing her continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted documentation relating to her residence and physical presence.

The director determined that the applicant had failed to establish she is a national of El Salvador and denied the application on May 19, 2003.

On appeal, counsel for the applicant submits documentation indicating that the applicant was placed in removal proceedings under section 240 of the Act on December 1, 2000 (A78 507 064). At that time, the applicant claimed to be a citizen or national of El Salvador. The applicant was charged with having entered the United States without inspection on November 30, 2000.

The regulations at 8 C.F.R. § 244.9 regarding the documentation required to establish identity and nationality state, in pertinent part, that: "[E]ach application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documentation, explaining why the consular process is

unavailable, and affirming that he or she is a national of the designated foreign state. . . . Acceptable evidence in descending order of preference may consist of: (i) Passport; (ii) Birth certificate accompanied by photo-identification; and/or, (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint."

In this case, the applicant has failed to provide any of the required evidence to establish her nationality. Consequently, the director's decision to deny the application is affirmed.

Beyond the decision of the director, the applicant has failed to provide evidence establishing her identity. For this reason, as well, the application may not be approved.

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.