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FILE: [REDACTED]  
[WAC 03 259 53888]

Office: CALIFORNIA SERVICE CENTER

Date: **DEC 13 2005**

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: SELF-REPRESENTED

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*

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 claims to be 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 the applicant failed to establish she was eligible for late registration. The director also found that the applicant had failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement and additional evidence.

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 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 § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status 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.

The phrase 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.

The phrase 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 phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence 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 granted until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed her initial TPS application with Citizenship and Immigration Services (CIS) on August 15, 2003.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On December 21, 2003 the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The record does not contain a response from the applicant.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on March 2, 2004.

On appeal, the applicant states that she wants to complete her education in the United States. She submits additional evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States.

The applicant indicated on her TPS application that she was admitted to the United States at Los Angeles, California, on January 31, 2001, as a nonimmigrant B-2 visitor, with stay authorized to July 30, 2001. The record contains a photocopy of the page of the applicant's Salvadoran passport containing her United States nonimmigrant B-2 visitor's visa and two United States immigration admission stamps on the facing page dated January 31, 2001 and April 8, 2003, respectively. In order to qualify for late initial registration, the applicant was required to submit her TPS application within 60 days of the expiration of her nonimmigrant status. Since the applicant's nonimmigrant status expired on July 30, 2001, she should have filed her TPS application on or before September 29, 2001. The applicant did not file her application until August 15, 2003. Therefore, she is not eligible for late initial registration on this basis.

The applicant has submitted insufficient evidence to establish that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) and (g). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant initially submitted a photocopy of a plane ticket indicating her arrival in Los Angeles, California on January 30, 2001; a report card from Kofa High School in Tucson, Arizona, dated September 20, 2002; and a quarter grade report for the quarter from September 24, 2001 to [illegible].

As stated above, the applicant was requested on December 21, 2003, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The record does not contain a response from the applicant.

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on March 2, 2004.

On appeal, the applicant states that she is a good student and wants to complete her education in the United States. She submits the following:

1. an undated letter from [redacted] stating that the applicant has been her daughter's babysitter since February 15, 2001;
2. a photocopy of the biographic page of her Salvadoran passport indicating that she was admitted to the United States at Los Angeles, California, on January 31, 2001, and again on April 8, 2003;
3. photocopies of two quarter grade reports with illegible dates and one quarter grade report for the period from February 19, 2002 to March 28, 2002;
4. a photocopy of the applicant's immunization record indicating that she received immunizations in the United States on June 18, 2001; November 15, 2001, August 20, 2001, and February 20, 2002;
5. photocopies of a report card from Kofa High School in Tucson, Arizona, dated December 13, 2002, September 26, 2002, November 7, 2003, and December 19, 2003;
6. a photocopy of a "Star Student" certificate dated December 19, 2003;
7. a photocopy of a President's Education Awards Program certificate recognizing the applicant for outstanding academic achievement in 2002;
8. a photocopy of a Mathematics Mastery Award dated September 30, 2003;
9. a photocopy of a YUHSD "A-Team Membership Certificate" dated March 11, 2003; and,

10. photocopies of several "Good News from Kofa High School" notices dated March 8, 2002, September 12, 2003, October 3, 2003, February 13, 2004, and three notices with no dates or illegible dates.

The applicant has submitted only one letter from [REDACTED] (No.1 above) to establish her continuous residence in the United States from February 13, 2001 to June 18, 2001, and her continuous physical presence in the United States from March 9, 2001 to June 18, 2001.

The applicant claims to have lived in the United States since January 31, 2001. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support the letter from [REDACTED] during the periods discussed above. However, no such evidence has been provided.

As previously stated, United States admission stamps in the applicant's passport indicate that she departed the United States on an unknown date and was re-admitted at Los Angeles, California, on April 8, 2003. The record contains a photocopy of the applicant's Salvadoran passport containing her United States nonimmigrant B-2 visa and the facing page with two United States admission stamps. The facing page also bears a hand-written notation by the Immigration Inspector indicating that the applicant stated she had been living in Mexico since January 2001 with her sister-in-law, that this fact was verified by a check of CIS records, and that the applicant "is not living in the United States." This statement to an Immigration Officer during her immigration inspection directly contradicts her statement under penalty of perjury on the Form I-821, Application for Temporary Protected Status, that she has lived in the United States since January 31, 2001.

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 visa petition. Further, it is incumbent on 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. (Comm. 1988).

Furthermore, since the applicant departed the United States during the period required to establish continuous physical presence in the United States, she cannot establish continuous physical presence in the United States from March 9, 2001 to August 15, 2003, the filing date of her TPS application.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status 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 appeal is dismissed.