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

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FILE: [REDACTED]
[EAC 02 047 53155]

Office: VERMONT SERVICE CENTER

Date: DEC 20 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, Director
Administrative Appeals Office

DISCUSSION: The application and a subsequent motion to reopen were denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The case will be remanded.

The applicant is stated 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 had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits additional evidence concerning her continuous residence and continuous physical presence in the United States.

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 as 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.

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.

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. The Secretary of the Department of Homeland Security has granted an extension of the TPS designation with validity until September 9, 2006, 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 Citizenship and Immigration Services (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).

The record shows that the applicant filed her TPS application on October 10, 2001. Upon initial submission, the applicant forwarded:

1. A copy of a Continental Airlines ticket showing her leaving from Houston Texas on December 30, 2000 to New York and leaving New York on January 3, 2001 and arriving in Houston, Texas on the same day.

On May 16, 2003, the applicant was provided the opportunity to submit evidence establishing her continuous residence and continuous physical presence in the United States. The applicant did not respond to the director's request. The director denied the application on July 14, 2003. The applicant filed a late appeal to that determination on September 11, 2003 and submitted the following documentation:

2. A letter from [REDACTED] dated August 9, 2003 who states that the applicant was her son's baby sitter "on March 201 at December 201" and that she knew the applicant for two years.
3. Three rent receipts from [REDACTED] the applicant for \$300 dated February 1, 2000, January 1, 2001 and February 1, 2001.
4. An affidavit from [REDACTED] dated August 13, 2003 who states that he has known the applicant since January 1, 2001.
5. An affidavit from [REDACTED] dated August 8, 2004 who states that he has known the applicant since January 2001 as his co-tenant and friend.

On April 19, 2004, the applicant filed a request that her case be re-opened and submitted the following documentation:

6. Another affidavit from [REDACTED] dated March 19, 2004 who states he has known the applicant to be residing in the United States since January 2001 as she was his neighbor, girlfriend and friend.
7. Copies of receipts from a person whose first name is [REDACTED] whose last name is indiscernible dated April 30, 2002 for \$250, June 7, 2002 for \$250, May 7, 2003 for \$250 and January 30, 2004 for \$350.
8. Two envelopes that appear to be from persons in El Salvador addressed to the applicant in New York.

On appeal, the applicant forwards:

9. A letter dated July 29, 2004 from [REDACTED] of the Human Resources Department of [REDACTED] in Ronkonkoma, New York who states the applicant has been an employee of the firm since December 3, 2001.
10. An affidavit from [REDACTED] who states the applicant was a babysitter from March 1, 2001 through December 1, 2001 and that she has known the applicant since May 2000.

The applicant has presented sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite period. She has, thereby established that she has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c) (*supra*). Consequently, the director's reason for denying the application has been overcome.

Although not addressed by the director, the applicant has provided insufficient evidence to establish that she is a national or citizen of El Salvador. The record does not contain any photo identification such as a passport or national identity document to establish her nationality. 8 C.F.R. § 244.2(a)(1). The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

In these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further consideration and action.