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U.S. Citizenship
and Immigration
Services

[REDACTED]

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JAN 12 2005**
[WAC 01 173 53829]

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
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. § 1254.

The director denied the application because the applicant 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, counsel submits a brief 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 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.

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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 applicant initially submitted only two photo student identification cards from the Metropolitan Skills Center in Los Angeles, California, that expired June 30, 1999 and June 30, 2000, respectively, in an attempt to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

On October 31, 2001, the applicant was requested to submit: 1) evidence of nationality and identity; 2) evidence of continuous residence in the United States since February 13, 2001; and, 3) evidence of continuous physical presence in the United States since March 9, 2001. The applicant, in response, provided the following:

1. her Salvadoran birth certificate with English translation;
2. her Salvadoran voter registration card; and,
3. photocopies of the same student identification cards previously submitted with the initial Form I-821.

The director determined that the applicant had failed to submit sufficient evidence to establish continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on February 4, 2004.

On appeal, counsel asserts that the applicant is prima facie eligible for TPS. Counsel submits the following evidence:

1. the applicant's pay statements from [REDACTED] for the following pay periods ending July 15, 2001; November 30, 2001; January 27, 2002; and, June 30, 2002;
2. disability insurance statements from [REDACTED] in Seattle, Washington, reimbursing the applicant for lost pay relating to a work-related injury on October 22, 2002, for the following pay periods: January 18, 2003 to January 31, 2003; May 24, 2003 to June 6, 2003; July 29, 2003 to August 1, 2003, and a reimbursement statement for medical mileage for a medical appointment on April 14, 2003;
3. the applicant's 2002 Internal Revenue Service (IRS) Form 1040EZ, Income Return for Single and Joint Filers with No Dependents, reflecting an annual income of \$13,075, purportedly signed by the applicant on February 22, 2003;
4. the applicant's 2002 Form 540 EZ, California Resident Income Tax Return reflecting an annual income of \$13,075, purportedly signed by the applicant on February 22, 2003;
5. the applicant's 2002 IRS Form W-2, Wage and Tax Statement, from [REDACTED] reflecting annual earnings of \$13,075.20;

6. a Request for Verification of Information mailed to the applicant on April 22, 2002, by the Department of Motor Vehicles, State of California;
7. the applicant's 2001 IRS Form 1040EX, Amended U.S. Individual Income Tax Return, reflecting an annual income of \$10,707;
8. the applicant's 2001 IRS Form 1040A, U.S. Individual Income Tax Return, reflecting an annual income of \$10,707, purportedly signed by the applicant on August 11, 2003;
9. a statement from the applicant reiterating her claim to have resided in the United States since December 28, 1998.

The applicant's student identification cards indicate her presence in the United States in 1999 and 2000, but they do not establish her qualifying continuous residence in the United States since February 13, 2001, or her qualifying continuous physical presence in the United States since March 9, 2001, because both cards were issued prior to the required periods for continuous residence and continuous physical presence in the United States. The applicant has not submitted any contemporaneous evidence to establish her qualifying continuous residence or her continuous physical presence in the United States prior to July 15, 2001. The applicant has submitted only two pay statements dated July 15, 2001 and November 30, 2001, to establish her qualifying continuous residence and continuous physical presence in the United States during 2001.

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.

Beyond the decision of the director, it is noted that the applicant was apprehended by United States Border Patrol Agents attempting to enter the United States without inspection near Deming, New Mexico, on December 29, 1998. The applicant was ordered to appear for a removal hearing before an Immigration Judge on August 10, 2000. She failed to appear for her hearing as ordered. The Immigration Judge ordered the applicant removed from the United States.

On August 28, 2000, the District Director, Los Angeles, issued a Form I-166 ordering the applicant to appear at the Los Angeles District Office on September 27, 2000, for removal to El Salvador. The applicant failed to appear as ordered. The record contains a Form I-205, Warrant of Removal/Deportation, issued by the District Director, Los Angeles, on August 22, 2000, that is still outstanding.

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.