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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[EAC 03 112 51238]

Office: VERMONT SERVICE CENTER

Date: JUN 23 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:

[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 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 for 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. Subsequent extensions of the TPS designation have been granted, with the latest granted 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 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 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).

On November 6 2003, the applicant was 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 submit sufficient evidence to establish her eligibility for TPS and denied the application on March 17, 2004.

On appeal, counsel for the applicant states, "[t]he Center Director factually and legally erred in denying the Applicant's TPS application." Counsel submits the following:

1. a photocopy of the applicant's New York Learner Permit issued on October 2, 2003;
2. a photocopy of the applicant's Employment Authorization Card valid from September 10, 2003 to March 9, 2005;
3. a photocopy of the front and back of an NFB Express Check card issued on September 23, 2000;
4. a photocopy of a Gigante Express money transfer receipt dated January 6, 2001;
5. photocopies of a United States Postal Service Customer Receipt dated December 28, 2000 and a Money Order Receipt with an illegible date;
6. a photocopy of a cash receipt from The Colony Shop in Patchogue, New York, that appears to be dated January 9, 2001; and,
7. a letter from [REDACTED] New York, stating that he has been friends with the applicant since March 2001.

The United States Postal Service receipts (No. 5 above) are not sufficient to establish the applicant's residence or physical presence because her name does not appear on either document. The letter from [REDACTED] (No. 7 above) has little evidentiary weight. He does not state the basis of his acquaintance with the applicant, nor does he provide the address(es) at which she has resided since he became acquainted with her. The NFB Express Check card (No. 3 above) does not establish the applicant's residence or physical presence in the United States because it was issued prior to the requisite periods. The applicant has only provided documents (Nos. 1, 4 and 6 above) indicating her presence in the United States in January 2001 and September and October 2003.

The applicant claims to have lived in the United States since December 17, 2000. It is reasonable to expect that she would have some other type of contemporaneous evidence to support these documents; however, no such evidence has been provided. 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 filed her Form I-821, Application for Temporary Protected Status, on February 22, 2003. The initial registration period for Salvadorans was from March 9, 2001 to September 9, 2002. The applicant has not provided any evidence to establish her eligibility for late initial registration as set forth at 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

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.