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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 23 2005
[EAC 03 226 50262]

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 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 he was eligible for late initial 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 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The initial registration period for Salvadorans was from March 9, 2001 to September 9, 2002. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on July 28, 2003.

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

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

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On August 28, 2003, the applicant was requested to submit evidence to establish his eligibility for late initial registration. The applicant was also requested to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted documentation relating to his residence and physical presence.

The director determined that the applicant had failed to establish he was eligible for late initial registration and denied the application on March 3, 2004.

On appeal, the applicant has not submitted a statement or any evidence to establish his eligibility for late initial registration.

The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status on this basis 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.

On August 28, 2003, the applicant was requested to submit evidence to establish his eligibility for late initial registration. The applicant was also requested to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In response, the applicant submitted the following:

1. a letter dated September 29, 2003 from [REDACTED] owner of [REDACTED] in Plainfield, New Jersey, stating that the applicant has been a customer at her restaurant since December 2000;
2. a letter dated September 29, 2003, from [REDACTED] manager of Gitano Restaurant in Plainfield, New Jersey, stating that the applicant has been a customer at his restaurant since December 2000;
3. a letter dated September 29, 2003, from [REDACTED] stating that he has known the applicant since they were both in El Salvador and "she came in the year 2000 from that year we are very close friend;"

4. a letter dated September 29, 2003, from [REDACTED] stating that he has known the applicant since they were both in El Salvador and that "she came in the year 2000 from that year we are very close friend;"
4. a letter dated September 29, 2003, from [REDACTED] stating that he has known the applicant since they were both in El Salvador and that "she came in the year 2000 from that year we are very close friend;" and,
5. an affidavit dated August 6, 2003, from [REDACTED] who stated that he is the owner of the property located at [REDACTED] in Plainfield, New Jersey, and that the applicant had lived at the above address since February 1999.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 3, 2004.

On appeal, the applicant submits the following:

6. a letter dated October 2, 2003, from [REDACTED] of St. Mary's Roman Catholic Church in Plainfield, New Jersey, stating that the applicant is a regular parishioner of his church;
7. a Muhlenberg Regional Medical Center Discharge Instructions form dated December 10, 2000;
8. a photocopy of Internal Revenue Service (IRS) Form W-8 (SP), Solicitud de Numero de Identificacion Personal del Contribuyente de Servicio de Impuestos Internos (Request for Personal Identification Number for Federal Income Tax Payer); and,
9. a medical form dated December 15, 2000, from [REDACTED] stating that the applicant hurt his right knee and had been instructed not to lift anything more than 10 pounds for the next two weeks.

The applicant has submitted two documents indicating his presence in the United States in December 2000, but he has submitted only letters and affidavits to establish his qualifying continuous residence and continuous physical presence in the United States since December 2000 and during the requisite periods.

The letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not state the inclusive dates of the applicant's membership in his parish. Additionally, it is noted that the letters from [REDACTED] are all identical. Further, all three individuals refer to the applicant as "she" rather than "he" in indicating that the applicant came to the United States in the year 2000.

The applicant claims to have lived in the United States since October 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite period; 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 he 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 on these grounds will also 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.