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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[SRC 01 254 51128]

Office: Texas Service Center

Date: MAR 17 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.


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant, through counsel, asserts her claim of eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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.

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. 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 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).

On January 24, 2003, the applicant was requested to submit evidence establishing her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing her application. The applicant was also requested to submit photo identification or a

national identity document. In response, the applicant submitted some evidence in an attempt to establish her continuous residence and continuous physical presence in the United States. The director, however, determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on May 23, 2003.

On appeal, the applicant, through counsel, states that she arrived in the United States on January 30, 2001, at around 4:00 a.m. She also states that she took a flight to Houston, Texas the following day. Further, she states that she is currently employed in Dallas, Texas. The applicant, along with her appeal, submits the following documentation: a copy of her Employment Authorization card; a copy of her Texas, Department of Public Safety Identification bearing an expiration date of April 20, 2009; a copy of her Social Security card; a copy of two envelopes addressed to the applicant in the United States; copies of Envios Urgentes Courier Service receipts dated March 3, 2001, March 24, 2001, April 14, 2001, April 28, 2001, June 2, 2001, and June 30, 2001; copies of Continental Airlines roundtrip itinerary for the applicant dated May 8, 2001; and a hand-written letter dated February 2, 2003, from [REDACTED] who state that the applicant began working for him since February 1, 2001.

The copies of the receipts from Envios Urgentes Courier Service, the copy of the airline itinerary, and the envelope addressed to the applicant postdate the requisite time periods for El Salvador TPS. The statements provided by [REDACTED] regarding the applicant's employment are not supported by corroborative evidence. Further, the applicant claims to have lived in the United States since January 30, 2001. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support her continuous residence and continuous physical presence in the United States during the requisite time periods. It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

An alien applying for TPS 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.