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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 02 254 51023]

Office: Vermont Service Center

Date: NOV 02 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 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 her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts her eligibility for TPS and submits some evidence in support of her claim.

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 March 13, 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 two photographs. In response, the applicant submitted the following documentation:

1. Copies of hand-written rental receipts for a room at [REDACTED] California dated February 25, 2001 (No. [REDACTED] March 31, 2001 (No. [REDACTED] April 30, 2001 (No. [REDACTED] May 31, 2001 [REDACTED] and June 30, 2001 [REDACTED]; and,
2. A letter dated April 7, 2003, from Ms [REDACTED] who stated that the applicant has been in the United States since December 10, 2000, and that she cleaned her house every Saturday.

On June 29, 2004, the applicant was again 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 director determined that the record did not contain a response to this request; therefore, the director denied the application on August 23, 2004.

On appeal, the applicant stated that she arrived the United States in December 2000, and that moved from California to New York in January 2003. The applicant also submits the following documentation along with her appeal:

3. Copies of hand-written rent receipts from [REDACTED] Fontana, California bearing dates of "-8-01" and "2-6-01";
4. A copy of a billing report dated "02-21-01" from the State of California-Child Health and Disability Prevention Program;
5. Copies of her earnings statements bearing dates of October 21, 2001 through November 25, 2001;
6. Copies of a billing statement from Arrowhead Regional Med dated December 15, 2001;
7. A copy of her 2001 Form 1040 printout from the Internal Revenue Service
8. Copies of her earnings statements from [REDACTED] dated March 7, 2002, March 21, 2002, and May 2, 2002; and,
9. Copies of the Employment Authorization cards for her son, [REDACTED] and her daughter, [REDACTED]

A review of the record of proceedings reflects that the director erred in stating that the applicant did not respond to the director's June 29, 2004 request. The record contains a response from the applicant dated July 14, 2004, and the applicant submitted the following documentation:

10. A copy of a Certificate of Achievement from Bellflower Adult School dated November 2000;
11. A copy of an earnings statement bearing a date of December 15, 2000; and,
12. A copy of a hand-written rent receipt from Oakcrest Apartments bearing a date of "12-13-00."

It is also noted that the applicant, along with her application for TPS provided the following documentation:

13. Copies of her El Salvadoran birth certificate along with an English translation; and,
14. Copies of hand-written rental receipts for a room at [REDACTED] Angeles, California dated February 25, 2001 (No. [REDACTED]), March 31, 2002 (No. [REDACTED]), April 30, 2001 (No. [REDACTED]), May 31, 2001 [REDACTED] and June 30, 2001 [REDACTED].

A review of the evidence submitted by the applicant reveals numerous discrepancies. The applicant claimed on her applications for employment authorization and temporary protected status that she did not enter the United States until December 2000. However, in response to the director's June 29, 2004 request, the applicant submitted a copy of an achievement award, as detailed in No. 10, bearing a date of November 2000 and indicating that she had made successful gains in the class. This does not seem logical, since the applicant claimed that she arrived the United States in December 2000, one month later. In addition, the earnings statement, as detailed in No. 11 above, does not indicate the employer's name or address. Further, it is noted that the letter from Ms. [REDACTED] as detailed in No. 2 above, indicates that the applicant did not arrive the United States until December 10, 2000. Therefore, the applicant would have had to work 128.5 hours in just 5 days.

It is also noted that the applicant submitted copies of hand-written receipts reflecting that she resided at [REDACTED] in Los Angeles, as detailed in Nos. 1 and 14 above, from February 25, 2001 to July 31, 2001. However, the applicant also submitted hand-written rent receipts from [REDACTED] as detailed in Nos. 3 and 12 above, that indicate that she lived in Fontana, California during the same period.

It is also noted that the photocopied hand-written rent receipt No. [REDACTED] as detailed in Nos. 1 and 14 above, appears to have been altered as the year on one copy is "2002" and another copy it was changed to reflect "2001." The copy of the billing report regarding her son, as detailed in No. 4 above, also appears to have been altered as the original date seems to have been altered to reflect an earlier date. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the apparent alterations of the documents noted above, or the discrepancies in the applicant's claimed residence. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to satisfy 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 temporary protected status on this ground will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

