

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

MI

[REDACTED]

FILE:

[REDACTED]

[EAC 01 184 51012]

Office: VERMONT SERVICE CENTER

Date: **JAN 06 2006**

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, reopened, and denied again 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 initially denied the application due to abandonment on March 18, 2004, because the applicant failed to appear to be fingerprinted or request that her fingerprint appointment be rescheduled

On April 29, 2004, the application filed a motion to reopen the matter. On motion, the applicant explained that she failed to appear for her fingerprint appointment because she had lost the fingerprint appointment notice.

On June 19, 2004, the director reopened the matter and provided the applicant with another opportunity to be fingerprinted, and the fingerprint results report revealed no criminal record.

The director denied the application again on September 22, 2004, 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 parole; 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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted 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, through September 9, 2002. The record reveals that the applicant filed her initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on April 19, 2001.

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).

The applicant indicated on her Form I-821, Application for Temporary Protected Status, that she entered the United States without inspection on July 18, 2000. In support of her application, the applicant submitted the following:

1. a photocopy of her 2000 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, from Clean Sweep, Inc.;
2. a photocopy of a hand-written earnings statement from Modern Cleaning Service, address not identified, for the pay period from October 2, 2000 to October 5, 2000;
3. a photocopy of a Western Union money transfer receipt dated December 23, 2000; and,
4. a photocopy of her Virginia Identification Card issued on July 19, 2000.

On June 19, 2004, the applicant was requested to submit evidence establishing her identity and nationality and 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 continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on September 22, 2004.

On appeal, counsel for the applicant states that the applicant entered the United States on July 18, 2000, and has resided continually in the United States since that date. Counsel submits the following evidence:

5. a photocopy of the applicant's most recent Virginia Driver's License issued on July 21, 2004;
6. photocopies of documents previously submitted with the applicant's Form I-821.

The applicant's 2000 IRS Form W-2 (No. 1 above), her 2000 earnings statement from Modern Cleaning Service (No. 2 above), the money transfer receipt dated December 23, 2000 (No. 3 above), and the applicant's Virginia Identification Card (No. 4 above) are all dated prior to the requisite periods to establish continuous residence and continuous physical presence in the United States. The applicant's Virginia Driver's License (No. 5 above) is dated after the requisite periods. The applicant has not submitted any evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Additionally, the applicant claims that she entered the United States without inspection near Los Angeles, California, on July 18, 2000, but her Virginia Identification Card was issued on July 19, 2000, one day later. It is unlikely that the applicant could have traveled from California to Virginia and been issued a Virginia Identification Card one day after her arrival in California.

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.

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 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.