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

MI

FILE:

[REDACTED]
[EAC 02 048 54954]

Office: VERMONT SERVICE CENTER

Date: **JAN 26 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: 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, 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.

On June 3, 2003, the director denied the application due to abandonment because the applicant failed to appear to be fingerprinted or request another appointment to be fingerprinted. The director informed the applicant that there is no appeal from a denial due to abandonment, but that she could file a motion to reopen the case within 33 days of the date of issuance of the Notice of Decision.

On June 27, 2003, the applicant filed a motion to reopen the case. The applicant stated that she failed to appear for her fingerprint appointment because she never received the fingerprint appointment notice.

The director reopened the matter and provided the applicant with another opportunity to be fingerprinted. The applicant appeared for her fingerprint appointment as scheduled.

The director subsequently denied the application again on June 18, 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, the applicant submits a statement. The applicant indicates that additional evidence would be submitted within 30 days. To date, no such evidence has been received. Therefore, the record will be considered complete.

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.

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 has 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 November 13, 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 record reveals that the applicant was apprehended by the United States Border Patrol on March 16, 2000, after having crossed the Rio Grande River near Brownsville, Texas, and placed in removal proceedings. On August 23, 2000, she was ordered deported to El Salvador by an Immigration Judge in Harlingen, Texas.

On September 13, 2000, the District Director, Harlingen, Texas, issued a notice ordering the applicant to report to the District Office in Harlingen for removal to Mexico on October 13, 2000, and a Form I-205, Warrant of Removal/Deportation. The applicant failed to appear to be deported as ordered. The warrant of removal remains outstanding.

On March 15, 2004, 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 applicant, in response, submitted the following:

1. an affidavit dated April 6, 2004, from [REDACTED] stating that the applicant, who is his daughter, came to live with him in 2000, and that they moved to Woodstock, Virginia, in October 2001; and,
2. photocopies of 24 generic rent receipts reflecting rent paid by [REDACTED] the applicant's father, from May 3, 2000 through April 1, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on June 18, 2004.

On appeal, the applicant states that she arrived in the United States on March 17, 2000, and has lived with her father since her arrival, first in New Jersey, and currently in Woodstock, Virginia. She did not submit any additional evidence to establish her qualifying continuous residence and continuous physical presence in the United States.

The generic receipts reflecting rent paid by the applicant's father do not establish the applicant's residence and physical presence in the United States because they relate to her father, rather than to her. Without corroborative evidence, the affidavit from the applicant's father is not sufficient to establish her qualifying continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

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.