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U.S. Citizenship
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Services

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[REDACTED]

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FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: JUN 26 200

[EAC 03 007 51922]

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, Chief
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 claims to be 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 originally denied the application on June 3, 2003, after determining that the applicant had abandoned her application based on her failure to appear for fingerprinting on November 5, 2002. On August 8, 2003, a motion to reopen was filed by the applicant. On June 9, 2004, and again on August 3, 2004, the director issued a notice of intent to deny the application, and accorded the applicant an opportunity to submit evidence to show that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. The director determined that the two letters of good moral character and the three receipts furnished by the applicant in response to the request for additional evidence are not sufficient to establish residence and physical presence; therefore, the director denied the application on November 24, 2004. The applicant appealed the director's decision on January 13, 2005. Because the appeal was not filed within the prescribed period of 33 days, the director rejected the appeal and accepted it as a Motion to Reopen. After a complete review of the record of proceeding, including the motion, the director determined that the grounds for denial have not been overcome and again denied the application on February 15, 2005.

On appeal, the applicant submits a statement and additional evidence, including evidence previously furnished and found by the director to be insufficient.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General 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 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 valid 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).

The record shows that the applicant filed her TPS application on September 9, 2002. The director reviewed the record of proceeding and determined that the evidence furnished by the applicant was insufficient to establish continuous residence and continuous physical presence during the requisite period.

On appeal, the applicant submits:

1. Statements from [REDACTED] and [REDACTED] claiming that they have known the applicant since 2000.
2. A statement dated March 10, 2005, from [REDACTED], Associate Pastor, St. Luke's Roman Catholic Church, Brentwood, New York, indicating that the applicant has been active in the congregation since 2001, and has been legally employed for three years.

3. A copy of a statement dated September 3, 2004, from [REDACTED] president and owner of Island Asphalt Maintenance, indicating that he has known the applicant "for the last few years," she is honest, hard working and a likeable person, and has high moral values.
4. A copy of a statement dated August 7, 2002, from [REDACTED] Huntington Station, New York, certifying that the applicant is a patient at his office since December 15, 1999 to the present, and that she is a good person.
5. Copies of three generic receipts for the "rent of a room" for the period November 30, 1999 to December 31, 1999; June 30, 2000 to July 31, 2000; and October 31, 2000 to November 30, 2000.

The statements from [REDACTED] and [REDACTED] (No. 1 above), including the statement from [REDACTED] (No. 3 above) attest to the applicant's good moral character, but fail to provide any specifics regarding the nature, circumstances, or origin of the affiants' acquaintanceship with the applicant, and the address where the applicant resided during the time of their acquaintance. Additionally, the statement from [REDACTED] was not attested to or notarized. The statement from [REDACTED] (No. 2 above) 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 explain the origin of the information to which he attests, and how he knows the applicant. Additionally, the pastor failed to show inclusive dates of the applicant's membership at the church, the dates the applicant resided in his parish, and the address where the applicant resided during the membership period. While [REDACTED] (No. 4 above) indicated that the applicant was a patient at his office since December 15, 1999, he failed to include specific dates the applicant was seen or treated at his office.

The rent receipts (No. 5 above) are generic and also have little evidentiary value. Although the receipts were signed by [REDACTED], no other information, such as the address of the property rented and a telephone number, was listed. Furthermore, the applicant failed to submit supporting evidence, such as a copy of a rental agreement or a notarized affidavit from his landlord.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided to establish the applicant's qualifying residence and physical presence in the United States were not supported by any other corroborative evidence. The applicant claimed to have lived in the United States since October 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support her claim; however, no such evidence has been provided.

The applicant has failed to establish that she has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application will be affirmed.



Beyond the decision of the director, it is noted that although the record of proceeding contains an El Salvadoran birth certificate, the certificate was not accompanied by an English translation as required by 8 C.F.R. § 103.2(b)(3), and photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

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.