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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[WAC 01 221 51302]

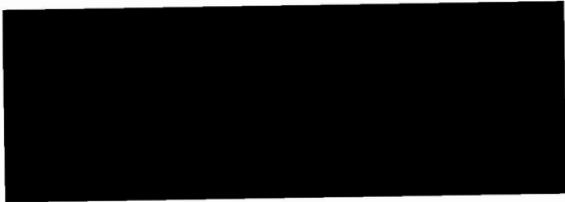
Office: Vermont Service Center

Date: JAN 30 2007

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:



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, reopened, and denied again by the Director, Nebraska Service Center (NSC), 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 after determining that the applicant failed to establish that she “entered the United States prior to February 13, 2001”, maintained residence since February 13, 2001, and maintained continuous physical presence in the United States since March 9, 2001.”

The record reveals that the applicant filed her application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 7, 2001. The director denied the application on February 3, 2004. Counsel, on behalf of the applicant, filed a motion to reopen the director’s decision on February 23, 2004. After a complete review of the record of proceedings, including the motion, the director determined that the grounds for denial had not been overcome. Thus, the director affirmed his previous decision and denied the application on September 8, 2004.

On October 4, 2004, counsel submitted a subsequent motion to reopen the director’s September 8, 2004 decision. The director dismissed this second motion on November 2, 2004, because the jurisdiction of the case belonged to the AAO. The director stated that, according to the record, counsel had also submitted an appeal that was received prior to the filing of the motion.

A review of the record reflects that counsel had filed a motion to reopen [LIN 05 006 51661] and an appeal [LIN 05 006 51647] on October 4, 2004. The appeal is now before the AAO. It is also noted that counsel submitted a separate brief dated December 13, 2004, referring to the director’s November 2, 2004 decision to dismiss the second motion.

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.

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 by the Secretary of the Department of Homeland Security, with validity until September 9, 2007, 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 appeal, counsel also provides an affidavit from the applicant stating that she entered the United States through San Ysidro, California on January 30, 2001. The applicant also stated that that she lived with a friend, [REDACTED] and her boyfriend, [REDACTED] at [REDACTED] until July 2002. In addition, the applicant also stated that she never received any bills and that she did not visit a doctor or dentist because she was afraid to reveal her true identity.

In addition, counsel provides an affidavit from the applicant's boyfriend, [REDACTED], who states that he lived with [REDACTED] from January 2001 to July 2002. He also states that the applicant did not receive any bills and that she did not visit the doctor or dentist because they were afraid of revealing their true identities.

Counsel also states in his letter dated December 13, 2004, that the applicant had first entered the United States on January 30, 2001, without inspection at San Ysidro, California. Counsel further states that the applicant lived with her friend, [REDACTED] at [REDACTED] until July 2002. In addition, counsel states that the applicant did not receive any bills in her name and that she did not visit the doctor or dentist because of fear that the government would detect her and remove her from the United States.

Counsel, on appeal, also provides the following in support of the applicant's claim of eligibility for TPS:

- 1) An affidavit dated September 24, 2004, from [REDACTED] who stated that the applicant had worked for her from February 2001 to June 2001;
- 2) An affidavit dated September 24, 2004, from [REDACTED] who stated that the applicant had worked for him from March 5, 2001 to March 12, 2001;
- 3) An affidavit dated September 22, 2004, from [REDACTED] who stated that the applicant arrived the United States on January 30, 2001, and the applicant had lived in his house until July 2002;
- 4) Copies of the applicant's IRS Form W-2, Wage and Tax Statements, for the years 2001, 2002 and 2003;
- 5) Copies of the applicant's Income Tax Returns for the years 2001, 2002, and 2003;
- 6) A copy of a letter dated June 10, 2002, from the IRS regarding the applicant's 2001 tax return;
- 7) A copy of the applicant's passenger receipt and flight itinerary dated July 17, 2002;
- 8) Copies of the applicant's State of California Health Access Programs, American HealthGuard;
- 9) California Identification Card issued on July 3, 2002;
- 10) Copies of the applicant's Social Security Statement dated April 13, 2004; and,
- 11) Copies of [REDACTED] IRS Form W-2 and Income Tax returns for the years 2002 and 2003.

The tax documents, as detailed in Nos. 4, 5, 6, and 10 above, may indicate that the applicant was in the United States during the year 2001, 2002, and 2003. However, these documents do not provide the actual dates of employment. The burden is on the applicant to establish her residence since February 13, 2001, and her physical presence since March 9, 2001. In addition, the statements provided by the affiants, as detailed in Nos. 1, 2, and 3, regarding the applicant's claimed continuous residence and continuous physical presence in the United States are not supported by corroborative evidence covering the beginning of the requisite time periods. It is also noted that the applicant claimed on her TPS re-registration, signed by the applicant on September 9, 2002, that she still resided at [REDACTED]. However, according to [REDACTED] the applicant lived at that address until July 2002; thus, questioning the credibility of his statement. The copies of the remaining evidence submitted on appeal post-date the requisite timeframe for continuous residence and continuous physical presence for El Salvador TPS.

It is also noted that along with her TPS application, the applicant submitted a copy of letter dated March 19, 2001, from the University Physicians Health Care located in El Monte, California, indicating that "[REDACTED] [REDACTED] was under their professional care from February 6, 2001. However, according to her counsel and the sworn statements submitted by the applicant and her boyfriend, [REDACTED], she did not visit a doctor or dentist. Therefore, the credibility of this letter is highly questionable. 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 discrepancies as noted above. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS 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.