



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



MI

FILE: [REDACTED]
[EAC 01 196 54662]

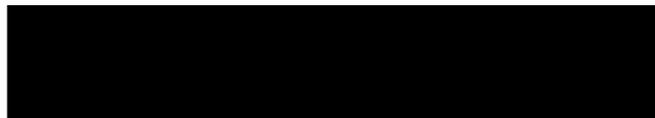
Office: VERMONT SERVICE CENTER

Date: MAR 01 2007

IN RE: Applicant: [REDACTED]

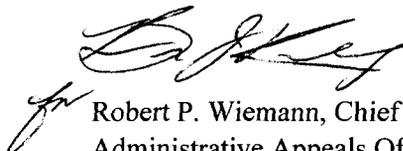
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed and the previous decision of the AAO will be affirmed.

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 she had continuously resided in the United States since February 13, 2001.

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on August 15, 2003.

On motion to reopen, the applicant reasserted her claim of eligibility for TPS. The applicant also submitted evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the qualifying period.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant's motion to reopen consists of a statement from the applicant and submission of additional evidence. Specifically, the applicant submits:

1. A copy of a State of New York Department of Health birth certificate dated February 23, 1997.
2. A copy of an immunization record from February 23, 1997 through May 1998.
3. Copies of a Nassau University Medical Center In-Patient Admission document indicating an admission date of December 2, 2002, and a Department of Emergency Admission Statement, and supporting documentation, indicating a registration date of September 13, 2000.

The documents listed in Items No. 1 and 2, and the September 13, 2000 statements listed in No. 3, above, indicate the applicant was present in the United States prior to February 13, 2001. The applicant has provided insufficient evidence to establish her qualifying continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application on May 14, 2006.

Counsel for the applicant lists other evidence purported to have been submitted. However, there is nothing in the record to indicate that this listed evidence was submitted on appeal. Counsel for the applicant also asserts that the applicant received ineffective representation from her former counsel because the former counsel may

not have submitted pertinent evidence. However, CIS is not responsible for the action or inaction of the applicant's representative.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO is affirmed.