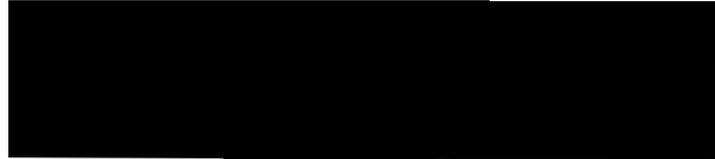




U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



*MM*

FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **MAY 21 2007**

[WAC 05 207 79510]

IN RE:

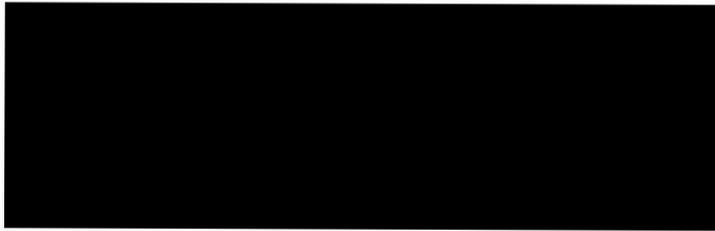
Applicant:



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, California Service Center (CSC). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion 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 re-registration application on July 12, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The applicant appealed the director's decision to the AAO on August 2, 2005. The AAO reviewed the record of proceeding and noted that: (1) the applicant's initial TPS application [WAC 01 197 52066] was originally denied by the CSC director on March 2, 2004, after determining that the applicant had abandoned her application based on her failure to respond to a request dated November 23, 2003, to submit the final court disposition of her arrest on November 15, 2001, for "prostitution," and evidence to establish her qualifying continuous residence since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application; (2) the applicant filed a motion to reopen on April 2, 2004, and submitted additional evidence in an attempt to establish residence and physical presence; (3) the director reopened the applicant's case on April 8, 2004, and issued a second Notice of Intent to Deny dated April 12, 2004, requesting that the applicant submit the final court dispositions of her arrest for prostitution and of any and all arrests; (4) the applicant failed to respond; therefore, the director again denied the initial application due to abandonment on August 26, 2004.

The AAO also noted that on appeal from the denial of the re-registration, the applicant furnished the final court disposition of her arrest for prostitution indicating that the applicant was subsequently convicted on February 27, 2002 for "disorderly conduct: prostitution," in violation of section 647(b) PC, a misdemeanor, and that since she was convicted of only one misdemeanor, she was not ineligible for TPS based on her criminal record. The AAO further noted that the applicant had not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods as described in 8 C.F.R. § 244.2(b) and (c). The AAO, therefore, affirmed the director's decision to deny the re-registration application and dismissed the appeal on July 25, 2006.

On motion, counsel requests reconsideration of the application and submits additional evidence, including evidence previously furnished.

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

Based on the plain meaning of "new," a new fact is held to be evidence that was not available and could not have been discovered or presented in the previous proceeding.<sup>1</sup>

When used in the context of a motion to reopen in analogous legal disciplines, the terminology "new facts" or "new evidence" has been determined to be evidence that was previously unavailable during the prior

---

<sup>1</sup> The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . ." *WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY* 792 (1984) (emphasis in original).

proceedings. In removal hearings and other proceedings before the Board of Immigration Appeals, "[a] motion to reopen proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing . . ." 8 C.F.R. § 3.2 (1999). In examining the authority of the Attorney General to deny a motion to reopen in deportation proceedings, the Supreme Court has found that the appropriate analogy in criminal procedure would be a motion for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992); *INS v. Abudu*, 485 U.S. 94, 100 (1988). In federal criminal proceedings, a motion for a new trial based on newly discovered evidence "may not be granted unless... the facts discovered are of such nature that they will probably change the result if a new trial is granted, . . . they have been discovered since the trial and could not by the exercise of due diligence have been discovered earlier, and . . . they are not merely cumulative or impeaching." *Matter of Coelho*, 20 I&N Dec. 464, 472 n.4 (BIA 1992)(quoting *Taylor v. Illinois*, 484 U.S. 400, 414 n.18 (1988)).

On motion, counsel reasserts the applicant's claim of eligibility for TPS, and resubmits copies of court documents relating to the applicant's arrest and conviction for prostitution. He also submits additional evidence, including evidence previously furnished, in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying periods. He further asserts that the applicant did not receive the second notice [dated April 12, 2004] requesting additional evidence.

The record indicates that the request for additional evidence dated November 23, 2003, and the director's notice of decision to deny dated March 22, 2004, were mailed to the address the applicant provided at that time [REDACTED]. **Additionally, the notice of intent to deny dated April 12, 2004, and the director's notice of decision to deny dated August 26, 2004, were also mailed to the [REDACTED] address, the same address the applicant supplied when she filed her motion to reopen on April 2, 2004.** There is no evidence in the record that the applicant had advised CIS of a new change of address, nor is there evidence that the notices were returned to CIS as undeliverable.

A review of the evidence submitted on motion reveals no fact that could be considered "new" under 8 C.F.R. § 103.5(a)(2). All evidence submitted was previously available and could have been discovered or presented in the previous proceeding. The applicant has presented no new facts or other documentary evidence in support of the motion to reopen, and to establish that she was eligible for re-registration, and that she had established her qualifying continuous residence and continuous physical presence during the requisite periods [from February 13, 2001, to the date of filing the initial TPS application on April 11, 2001]. For these reasons, the motion may not be granted.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, *supra* at 323 (citing *INS v. Abudu*, 485 U.S. at 107-108). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, *supra* at 110.

Accordingly, the motion will be dismissed, and the previous decision of the AAO will be affirmed.

It is noted that the Federal Bureau of Investigation fingerprint results report indicates that the applicant was born in Estonia, and that she is a citizen of Estonia. The applicant is required to meet the eligibility requirements that she is a national of a designated foreign state pursuant to section 244(c) of the Act. The country of Estonia is not a foreign state designated under section 244 of the Act.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The motion is dismissed. The decision of the AAO dated July 25, 2006, is affirmed.