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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]  
[EAC 01 196 54105]

Office: VERMONT SERVICE CENTER

Date: **MAY 29 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:

[REDACTED]

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*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied due to abandonment by the Director, Vermont Service Center. The applicant filed a motion to reopen. The service center director reopened the case, and then subsequently denied the application for cause. The applicant filed an appeal to that decision that is now before the Administrative Appeals Office (AAO) 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 because the applicant failed to establish her continuous residence in the United States since February 13, 2001.

On appeal, the applicant submits a statement and additional evidence.

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 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 section 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.
- (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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Subsequent extensions of the TPS designation have been granted with validity of the latest extension until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 14, 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 CIS. *See* 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. *See* 8 C.F.R. § 244.9(b).

On February 24, 2003, the applicant was requested to submit evidence establishing her continuous residence and her continuous physical presence in the United States during the requisite dates. It is noted that this notice was sent to an incorrect address. When no response was received from the applicant, the director denied the application on the ground of abandonment on June 2, 2003. The director advised the applicant that, while a denial due to abandonment could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant responded to the director's decision on July 7, 2003, stating that she never received the request for additional evidence. With her response the applicant submitted photocopies of the following documentation: a notification of decision dated January 23, 2002, from Medical Assistance Programs, Queens Regional Face-to-Face Office, Long Island City, New York; a New York State Department of Social Services benefit identification card dated April 17, 2002; billing statements for medical services provided on March 10, 2001 and April 7, 2001; a New York State Department of Health, Certificate of Group Health Plan Coverage, reflecting coverage from March 1, 2001 to February 10, 2002; City of New York Medical Assistance Programs, Notice of Update on your Disaster Relief Medicaid, dated April 17, 2002; a notice regarding a health plan dated December 5, 2002; the biographic page of her El Salvadoran passport issued on April 24, 2003, by the Consulate General, Long Island, New York; an affidavit attesting to the applicant's residence in the United States since December 2000; and another copy of her El Salvadoran birth certificate.

The applicant had also previously submitted photocopies of her: Social Security card; Employment Authorization documents (EAD) valid under Category C19; El Salvadoran personal identification card; and, birth certificate.

The director accepted the submissions as a motion to reopen. Though the motion was filed more than 33 days after issuance of the director's decision, the 33<sup>rd</sup> day fell on a Saturday, and the motion was received the following business day, which made it timely filed in accordance with the regulations at 8 C.F.R. § 103.5(a)(1)(i), 8 C.F.R. § 103.5a(b), and 8 C.F.R. § 1.1(h). The director denied the application on March 12, 2004, determining that while the applicant had established her continuous physical presence in the United States since March 9, 2001, she had failed to establish her continuous residence in the United States since February 13, 2001.

On appeal, the applicant resubmits some of the documentation that was previously entered into the record. She also submits photocopies of the following materials: a New York City Department of Health, Certificate of Birth, for a child born to her on October 24, 2001; an Acknowledgement of Paternity dated October 25, 2001; Internal Revenue Service (IRS) tax forms and wage and tax statements for the years 2001, 2002, and 2003, for the applicant and the father of her child; additional medical and health benefit statements dated in 2001; three notarized letters from individuals attesting to the applicant's presence in the United States in January 2001 or earlier; and CIS receipt notices.

The AAO notes that none of the foregoing documentation shows that the applicant had an established residence in the United States as early as February 2001. While the affidavits from acquaintances in the New York City area assert that the applicant was in the country in December 2000 and January 2001, they provide few details about the applicant and are not, in and of themselves, persuasive evidence that the applicant had established a continuous residence in the United States by February 13, 2001. The other documentation of record indicates that the applicant was present in the United States during and after March 2001, but not as early as February 2001. The AAO concludes that the applicant has not established her continuous residence in the United States since February 13, 2001, as required to be eligible for TPS as an El Salvadoran national under 8 C.F.R. § 244.2(c). Accordingly, the director's denial of the application on that ground will be affirmed.

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 that burden.

**ORDER:** The appeal is dismissed.