

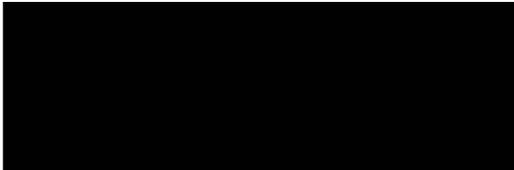
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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: Vermont Service Center

Date: **APR 28 2008**

[EAC 0123161023]

[EAC 07 217 51672 - motion]

INRE:

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: 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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). A subsequent appeal was dismissed by the Director, now Chief, Administrative Appeals Office (AAO). The applicant filed subsequent motions to reopen which were dismissed by the AAO. The matter is now before the AAO on a third motion to reopen. The motion to reopen 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 denied the application on April 22, 2003, because the applicant failed to establish her **qualifying** continuous residence and continuous physical presence in the United States. A subsequent appeal from the director's decision was dismissed on February 7, 2005, after the AAO also concluded that the applicant had failed to establish her **qualifying** continuous residence and continuous physical presence in the United States. The applicant filed a motion to reopen which was dismissed by the AAO on May 2, 2006.

On July 31, 2006, the applicant filed a second motion to reopen which was dismissed by the AAO because it was filed after the prescribed timeframe. On July 23, 2007, the applicant filed the current motion to reopen which is now before the AAO.

On motion to reopen, the applicant reasserts her claim of eligibility for TPS.

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.
- (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 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 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 applicant states, in her motion, that her previous motion to reopen was filed late because she used an immigration consultant who took her money and was in control of her case. The applicant also provides the following: a copy of a Form G-28, Entry of Attorney or Representative, completed by _____, a copy of her previously filed Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU); and, a copy of a transfer notice dated May 12, 2003. Additionally, the applicant requests a reconsideration of her case and that the evidence submitted with her previous her motion to reopen be reviewed.

The record of proceedings reflects that the applicant submitted the following documentation along with her motion to reopen dated July 31, 2006:

- 1) Copies of her Internal Revenue Service (IRS) Individual Income Tax Returns for the years 2000 and 2001.
- 2) An affidavit dated May 31, 2006, from [REDACTED], who stated that the applicant has been a customer since December 2000.
- 3) An affidavit dated May 31, 2006, from [REDACTED], who stated that the applicant has been a customer since January 1, 2001.
- 4) An affidavit dated June 19, 2006, from [REDACTED], who stated that the applicant took care of his son from December 4, 2000 until April 6, 2001.
- 5) An affidavit dated May 31, 2006, from her landlord, [REDACTED] a, who stated that applicant resided in his house since November 1, 2000.
- 6) A copy of a single Gigante Express receipt dated February 12, 2001.

The statements provided by the affiants in Nos. 2 and 3 are not supported by any evidence such as payments for services. Similarly, the statements from [REDACTED] as detailed in No.4, are not supported by evidence for her services as a baby sitter. In addition, the statements from her landlord, as detailed in No.5, are not supported by corroborative evidence such as utility bills or other correspondence addressed to her at her claimed residence since November 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions. The tax documents, detailed in No. 1 above, may indicate that the applicant was in the United States during the years 2000 and 2001. However, these documents do not provide the actual dates of employment.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, this issue on which the underlying decision was based has not been overcome on motion.

It also is noted that the applicant has provided insufficient evidence to establish that she is a national or citizen of El Salvador. 8 C.F.R. § 244.9, states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if

available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification;
and/or
- (iii) Any national identity document from the alien's country
of origin bearing photo and/or fingerprint.

The applicant has provided a copy of her birth certificate along with an English translation as evidence of her identity; however, pursuant to 8 C.F.R. § 244.2(a)(I), the applicant must also provide photo identification. Therefore, the application will also be denied for this reason.

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.