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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **JAN 26 2006**
[EAC 02 128 53136]

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: 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Vermont Service Center, 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 initially denied the application on November 17, 2003, after determining that the applicant had abandoned her application by failing to respond to a request for evidence dated October 17, 2002. The applicant was informed that there is no appeal from a denial due to abandonment, but she could file a motion to reopen and reconsider within 30 days of the issuance date of the denial decision.

On December 16, 2003, the applicant filed a motion to reopen and reconsider. On motion, the applicant submitted a statement and a letter from her fiancé.

The director reopened the matter on April 16, 2004, and denied the application because the applicant had failed to establish continuous residence in the United States since February 13, 2001.

On appeal, the applicant submits a brief 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 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 § 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 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.

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 has been granted, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On October 17, 2002, the applicant was requested to submit evidence establishing her qualifying continuous residence in the United States during the requisite time period. The record does not contain a response from the applicant.

The director denied the application after determining that the applicant had abandoned her application by failing to respond to a request for evidence.

On motion, the applicant stated, “[I]n the first week of October 2002, my husband was transferred to Louisiana to do some construction work and I accompanied him; we came back to Virginia at the end of January 2003.” The applicant stated that she did not receive the director’s request for evidence until after the deadline indicated in the request, January 12, 2003, had already passed. The applicant submitted a letter from her fiancé, [REDACTED] also a TPS applicant under CIS receipt number A94 058 679, stating that the applicant arrived in the United States through Tijuana, Mexico, on January 5, 2001, and has lived with him since that time. He further stated that the applicant has no evidence to submit to establish her qualifying continuous residence during the requisite period because she lives with him and all bills are in his name.

On June 24, 2004, the director reopened the matter and denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001.

On appeal, the applicant states that she believes the letter from Mr. [REDACTED], previously submitted on motion, is sufficient to establish her continuous residence in the United States since February 13, 2001. She submits a Commonwealth of Virginia birth certificate indicating that her son, [REDACTED] was born in Fairfax County, Virginia, on May 7, 2002.

The applicant’s son was born after the requisite period to establish continuous residence in the United States. The affidavit from Mr. [REDACTED] is not sufficient to establish the applicant’s qualifying continuous residence in the United States during the period from February 13, 2001 to February 19, 2002, the date her TPS application was filed. The applicant claims to have lived in the United States since January 5, 2001. It is reasonable to expect that she would have some type of contemporaneous documents to corroborate her fiancé’s affidavit; however, no such evidence has been provided. Without corroborative evidence, affidavits are not sufficient to establish an applicant’s qualifying continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

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 residence requirement described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has also failed to establish continuous physical presence in the United States since March 9, 2001 as described at 8 C.F.R. § 244.2(b). Therefore, the application also must be denied for this reason.

It is noted that, on March 19, 2003, the director denied the applicant's Form I-765, Application for Employment Authorization, filed on September 9, 2002, under CIS receipt number EAC 03 001 52722, because she failed to submit two photos in response to the director's request for evidence dated October 29, 2002. The director informed the applicant that there is no appeal from a denial due to abandonment, but she could file a motion to reopen within 30 days of the denial decision. On April 17, 2003, the applicant filed a motion to reopen the matter. There is no indication in the record that the director has ever issued a decision on the motion, although the director has subsequently approved two Forms I-765, filed on April 17, 2003 and August 18, 2003, respectively.

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 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 this burden.

ORDER: The appeal is dismissed.