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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **APR 12 2005**
[LIN 01 177 52241]

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.

Cindy M. Gomez

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be granted and the appeal will be sustained.

The applicant is a native and citizen of El Salvador who filed an initial TPS application on April 30, 2001. The director denied that application on November 6, 2001, for abandonment because the applicant failed to appear for an appointment for fingerprinting. The applicant filed another TPS application on December 31, 2001, still within the initial registration period. The director denied the subsequent application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish she had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. It is noted that the applicant was 14 years old at the time she submitted her initial TPS application.

An appeal from the director's decision was dismissed by the director of the AAO on September 30, 2002, after he also concluded that the applicant had failed to establish that she was eligible for TPS.

On motion to reopen, the applicant reasserts her claim of eligibility for TPS and submits evidence to establish her qualifying continuous residence in the United States.

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.

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 entry on or prior to February 13, 2001, 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity 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 he or 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 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 provided the following documentation with her motion:

1. Copies of her immunization records indicating vaccines given on June 19, 1987, August 19, 1987, October 7 and 29, 1987, November 12, 1991, July 11, 1995, and November 21, 2001. It appears her vaccines given on November 21, 2001, January 16, 2002, and April 10, 2002, were provided by "CCCHS" in Colorado.
2. Copies of her school transcripts and report cards from Meadow Elementary and McElwain Elementary schools in Thornton, Colorado, for the school years: 1995-1996, 1996-1997, 1997-1998, and 1998-1999.
3. Copies of her Third Quarter Student Progress Reports dated February 20, 2001 from York Middle School in Thornton, Colorado.
4. Copies of her middle school transcripts from York Middle School in Thornton, Colorado, for the months of October 2001, January 2002, March 2002, and May 2002.
5. Copy of her Student Performance Report dated March 11, 2002, from the Colorado Student Assessment Program.
6. Copies of her middle school identification cards from York Middle School in Thornton, Colorado, for the school years: 2001-2002 and 2002-2003.

The evidence submitted, as detailed above, reflects that the applicant has resided in the United States since 1987. In particular, the copies of her student progress reports and middle school transcripts, as detailed in Nos. 3 and 4 above, reflect that the applicant has maintained her current address at least since February 2001 up to the date of her filing for TPS.

The applicant has submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. Therefore, the director's decision will be withdrawn and the application will be approved.

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 met this burden.

ORDER: The appeal is sustained and the application is approved.