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FILE: [REDACTED]
[LIN 02 247 50035]

Office: NEBRASKA SERVICE CENTER

Date: **AUG 29 2005**

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 determined that 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. The director also found that the applicant failed to establish her identity and nationality. The director, therefore, denied the application.

On appeal, the applicant asserts that she just recently received a notice of denial. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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 as 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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 have been granted by the Secretary of the Department of Homeland Security, 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 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 submitted her initial TPS application on April 5, 2001. That application was denied by the director as abandoned on March 12, 2002, because the applicant failed to appear for fingerprinting. The record shows that the applicant filed this TPS application on July 23, 2002. On January 17, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant was also requested to submit a photo identity document and a copy of her birth certificate or passport. The applicant failed to respond to the notice. Therefore, the director denied the application.

On appeal, the applicant states that she never received a letter rejecting her renewal for employment. According to the applicant, she has lived in the United States since 1997 and applied in time for her renewals. The applicant also states that she was fingerprinted. The applicant provides a copy of a Manual (Ink) Fingerprinting Applicant Information Worksheet (AIW) dated October 16, 2002, and letters from [REDACTED] General Manager Wendy's of El Jebel, Colorado and [REDACTED]. The applicant also submits copies of Form I-797 C Receipt Notices dated April 26, 2001, and July 29, 2002, as well as copies of Fingerprint Notifications dated November 8, 2001 and August 29, 2001.

The fingerprint notices demonstrate that the applicant was requested to appear for fingerprinting on September 26, 2001 and again on December 6, 2001. The AIW indicates the applicant appeared for fingerprinting on October 16, 2002, subsequent to the denial of the applicant's initial TPS application.

states that Wendy's of El Jebel has employed the applicant since May 1997. 8 C.F.R. § 244.9(a)(2)(i) provides that letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury. Such letters from employers must include:

- (A) Aliens address(es) at the time of employment;
- (B) Exact period(s) of employment;
- (C) Period(s) of layoff; and
- (D) Duties with the company.

statement has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of her employment. Furthermore, the statement is not in affidavit form or signed and attested to be Ms. Newman.

states that the applicant lived at her house from November 1997 until September 2002. However, this statement is not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. It is noted that the record contains a copy of the applicant's birth certificate with English translation and a copy of her El Salvadoran identity document. Therefore, the applicant's nationality and identity have been established and these bases for the director's denial have been overcome.

The applicant, however, has not submitted sufficient evidence to establish that she has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status 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 this burden.

ORDER: The appeal is dismissed.