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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship
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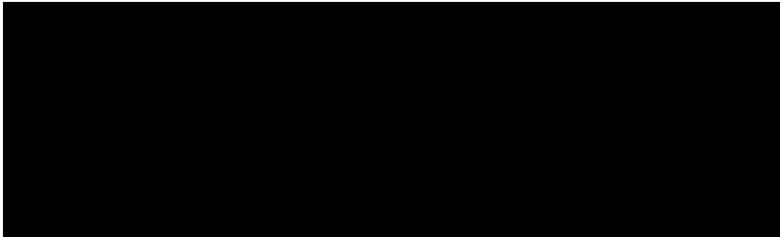
Office: VERMONT SERVICE CENTER

Date: DEC 05 2005

[redacted] consolidated herein]
[EAC 02 054 50854]

IN RE:

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:



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 N. Gomez

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and 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 during the requisite periods.

On appeal, counsel for 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.

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 have been granted with validity of the latest extension until September 9, 2006, 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 this TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on November 30, 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. 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 February 10, 2004, the applicant was requested to submit evidence establishing her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. In response, counsel for the applicant submitted photocopies of the following documentation: two Western Union receipts dated in December 2001, indicating the applicant's address as located in Alexandria Virginia; envelopes addressed to the applicant in the United States and postmarked on June 6, 2001 and December 11, 2001; and, a prescription dated August 6, 2001.

With this initial submission, the applicant had also submitted photocopies of: her El Salvadoran social security card in the name of [REDACTED], dated "06/10/1988;" her El Salvadoran cedula dated September 4, 1998; a sworn statement dated November 19, 2001, from her brother, in Pasco, Washington, stating that the applicant entered the United States on January 25, 2001, and lived with him in Washington before moving to another brother's house in Alexandria, Virginia; and, Western Union receipts from Pasco, Washington dated in May, June, and July of 2001.

The director determined that the applicant had failed to establish her qualifying continuous residence in the United States during the requisite period, and, therefore, denied the application on April 5, 2004.

On appeal, counsel for the applicant states that the applicant has submitted sufficient evidence of residence during the required period, and is submitting additional documents to further supplement her claim of residence in the United States. In support of the appeal, counsel for the applicant submits additional documentation consisting of 13 generic rent receipts dated in October, November and December of 2000, and March through December of 2001.

The applicant has failed to submit sufficient credible evidence to establish her continuous residence in the United States during the requisite period. The rent receipts submitted on appeal are generic and are consecutively numbered. Each of the receipts appears to have the same payee signature although the applicant indicates that she lived in two different states, Washington and Virginia, during the given timeframes. Further, the rent receipts from October through December of 2000, predate the applicant's stated date of entry into the United States as given on her Form I-821, Application for Temporary Protected Status, and in her brother's affidavit. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). These inconsistencies have not been explained. Therefore, the applicant has not established that she has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status on these grounds will be affirmed.

Beyond the decision of the director, for the reasons discussed above, the applicant has also failed to establish her continuous physical presence in the United States during the requisite period, as required under 8 C.F.R. § 244.2(c). The application must also be denied for this reason.

It is noted that the record reflects that the applicant had filed an earlier application for TPS [LIN 01 207 51170], under record number [REDACTED], on June 13, 2001, while living in Pasco, Washington. That application was also denied on September 11, 2001, after the director determined that the applicant had failed to submit photo identification, and failed to submit sufficient evidence to establish her date of entry into the United States prior to February 13, 2001, and her continuous residence in the United States since February 13, 2001.

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.