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U.S. Citizenship and Immigration Services

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[redacted]

MAY 02 2005

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
[EAC 02 260 50626]

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 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 that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits additional documentation.

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 pubic 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 by the Secretary of the Department of Homeland Security, with the latest 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).

The applicant filed her initial Form I-821, Application for Temporary Protected Status, on August 7, 2002. In support of her initial application, the applicant submitted the following documents:

1. A photocopy of an extract of her El Salvadoran birth certificate, with English translation, indicating that it was issued in El Salvador on October 16, 2001; and,
2. Letters, dated August 3, 2002, from and stating that they had known the applicant since January 10, 2000. The Valles' address on the letter is indicated to be the same as the applicant's:

On April 28, 2003, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted:

3. A letter, dated September 19, 2002, from Manassas, Virginia, stating that the applicant had been a client since January 18, 2000; and,
4. A letter, dated August 28, 2000, from , stating that she had known the applicant since 2000.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on January 5, 2004.

On appeal, the applicant submits the following additional documentation:

5. A letter, dated January 17, 2004, from who appears to be the same person as in No. 2, above) stating that he knows the applicant and that ". . . She's been a Rent [sic] from February 13, 2001 to this present time . . . . 's address on this letter is indicated to be:
6. A photocopy of an undated letter from the applicant indicating that she worked for on, Virginia, in 2001, but does not have any evidence of her employment because she lost her paychecks;
7. A photocopy of a Student Data Form FY 2002/FY 2003 from the Fairfax County Public Schools, Virginia;
8. A photocopy of a flyer from the Fairfax County Public Schools, dated December 6, 2002;
9. A photocopy of an ACE Learning Lab Certificate of Excellence issued to the applicant on December 15, 2003;
10. A photocopy of a Letter of Course Completion issued to the applicant for a course that began on September 16, 2003, and ended on December 15, 2003;

11. A photocopy of a Certificate issued to the applicant for completion of a course, dated July 29, 2003;
12. Photocopies of earnings statements issued to the applicant by CEC entertainment, inc., Irving, Texas, dated February 2002 through September 2002, showing the applicant's employee identification/social security number as
13. Photocopies of earnings statements issued to the applicant by CEC entertainment, inc., Irving, Texas, dated February 2003 through April 2003, showing the applicant's social security number as
14. A photocopy of the first page of her 2002 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, on which the applicant noted her social security number as
15. Photocopies of earnings statements issued to the applicant by Airlie Foundation, Warrenton, Virgina, dated October 2003 through December 2003, showing the applicant's social security number as and,
16. A photocopy of a receipt from Urgente Express, Miami, Florida, dated February 23, 2002.

The applicant claims to have continuously resided and been continuously physically present in the United States since her date of entry on January 10, 2000, to the date of filing her TPS application on August 7, 2002. It is reasonable to expect that she would have a variety of objective contemporaneous evidence to support this claim. Letters from acquaintances (Nos. 2, 3, 4, and 5, above) and the applicant herself (No. 6) and are not, by themselves, persuasive evidence of qualifying continuous residence and continuous physical presence. Nos. 8, 9, 10, 11, 13, and 15) are dated beyond the dates required to establish the applicant's continuous residence and continuous physical presence.

There are discrepancies noted in the documentation provided concerning the applicant's use of a social security number. At the time of filing her TPS application in August 2002, the applicant indicated that she had never before used a social security number. However, No. 12, above, indicates that she used employee identification/social security numbe from February through September 2002. No. 14 indicates that she also used social security number n 2002. These discrepancies have not been explained and call into question in the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

It is concluded that the applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, to the date of filing her application. 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.