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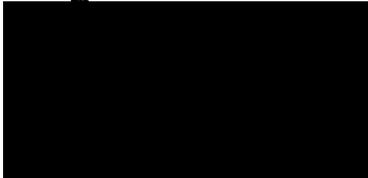
Date: **NOV 02 2005**

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 M. Gomez fo*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center. The applicant filed an appeal, through an immigration consultant. The applicant was considered as self-represented, and that appeal was dismissed by the Administrative Appeals Office (AAO). Subsequently, the applicant filed a motion to reopen that was dismissed by the AAO and the prior decision of the AAO was affirmed. Through counsel, the applicant has submitted a new motion to reopen. Counsel had previously submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative, which was not included in the record of proceedings initially forwarded to the AAO. Counsel was not provided notice of the previous AAO decision, subsequent to his submission of the Form G-28. Therefore, in view of the circumstances, the motion will be granted, the application will be denied on the merits of the case, and the prior decisions of the directors will be affirmed.

The applicant claims to be 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 qualifying continuous residence and her continuous physical presence in the United States during the requisite periods. A subsequent appeal from the director's decision was dismissed on April 16, 2003, after the Director of the AAO also concluded that the applicant had failed to establish that she was eligible for TPS. A subsequent motion to reopen was dismissed by the Director of the AAO on April 8, 2004.

On a new motion, counsel for the applicant submits a statement, and asserts the applicant's claim of eligibility for TPS.

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 her initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 21, 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 June 14, 2002, the applicant was requested to submit evidence establishing her continuous residence in the United States since February 13, 2001. In response, the applicant submitted a notarized statement dated July 15, 2002, from Mr. [REDACTED] stating that he has known the applicant since January 10, 2001, and that she had a monthly rental of a room in his house.

With her initial application, the applicant had submitted a photocopy of her El Salvadoran birth certificate, with English translation.

The director determined that the applicant had failed to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, and, therefore, denied the application on October 18, 2002. The director noted the discrepancy between the applicant's mailing address listed on her Form I-821, Application for Temporary Protected Status, and that given in the notarized statement submitted in response to the request for additional evidence.

On appeal, through a non-accredited representative, the applicant stated that the address used on her Form I-821 was for mailing purposes only. She indicated that she had not been allowed to receive mail at her residence because the owner did not want to encounter problems with the town for not having proper permits for rentals. She stated that she now could receive mail at the residence, and asked that her TPS be approved. The applicant did not submit any additional evidence in support of the appeal.

The Director of the AAO dismissed the appeal on April 16, 2003, finding that the applicant had failed to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, and noting that the only evidence of record was a questionable notarized statement.

On June 5, 2003, the applicant submitted a motion to reopen. She stated that she does not know how to obtain documentation because her employers do not want to verify employment for an undocumented worker. In support of the motion, the applicant submitted two affidavits dated May 13, 2003, from individuals who stated they have resided with the applicant and have known her since January 2001.

The Director of the AAO dismissed the motion on April 8, 2004, noting that it had been filed late, and affirming the prior decision of the AAO. It is noted that although current counsel had filed a Form G-28, on September 2, 2003, entering his appearance as attorney of record, that form was not included in the record of proceeding, and counsel was not provided notice of the April 8, 2004, AAO decision.

Counsel filed a motion to reopen. The initial attempt to file the motion on May 6, 2004, was rejected due to lack of fee. Counsel subsequently filed the motion on June 26, 2004. Counsel asserts that the applicant had been assisted by a notary whom she believed to be an attorney and whom she paid for what she thought would be professional service. Counsel requests that the applicant's motion to reopen be approved retroactively to May 19, 2004, or alternatively that she be given an extension to file a new motion to reopen with assistance of an attorney. Counsel noted ineffective assistance of counsel as reason to reopen. Counsel does not submit any additional evidence in support of the motion to reopen.

As noted above, this motion to reopen has been granted. However, counsel has not submitted any evidence to overcome the findings of the service center and AAO directors in the previous decisions. The record contains only three letters from acquaintances attesting to the applicant's presence in the United States. The three statements from acquaintances are not supported by any other corroborative evidence. The applicant claims to have lived in the United States alternately since December of 2000 or January of 2001. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these statements; however, no such evidence has been provided. 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 continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the directors' decisions to deny the application for temporary protected status will be affirmed.

In addition, it is noted that the applicant has failed to submit sufficient evidence of her identity and nationality. Although the record contains a photocopy of a birth certificate with English translation, the applicant has not submitted a passport, birth certificate accompanied by photo identification, and/or a national identity document from her country of origin bearing a photograph and/or fingerprint. She has therefore, also failed to establish that she has met the requirements at 8 C.F.R. § 244.2(a), and the application must also be denied for this reason.

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 motion to reopen is granted; the application is denied on its merits. The previous decisions of the AAO are affirmed.